3002.

SUPREME COURT OF THE UNITED STATES.

No. 94.

THE UNITED STATES, APP'TS,

vs.

JUAN MANUEL VACA AND JUAN FELIPE PEÑA.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DIST. OF CALIFORNIA.

INDEX.

	Original.	Print.
Title Page,	1	3
Minutes in Board of Commissioners,	3	3
Petition of Juan Manuel Vaca to Board of Comm'rs,	5	4
Deposition of Salvio Pacheco,	9	6
" " John Wolfskill,	10	7
" " H. W. Halleck,	11	8
" " John C. Hays,	13	9
" " Jacob P. Leese,	15	10
Expediente,	19	12
Certificate of S. D. King, U. S. Sur.-Gen'l for Cal.	25	15
Translation of Expediente,	28	16
Exhibit "A F," annexed to deposition of Jacob P. Leese,	33	20
Translation of same,	39	24
Document "I," annexed to deposition of Jacob P. Leese,	45	28
Translation of Grant,	47	29
Document K, "A F," annexed to deposition of Jacob P. Leese,	49	30
Translation of Approval,	51	31
Document O, "A F," annexed to deposition of Jacob P. Leese,	53	31
Translation "O,"	55	32
Document "T," annexed to deposition of Jacob P. Leese,	57	33
Translation of T,	59	35
Expediente,	61	36
Certificate of John C. Hays, U. S. Sur.-Gen'l for Cal.,	63	37
Map,	65	37

	Original.	Print.
Translation of Exhibit Z,	67	38
Order of Survey,	70	40
Certificate of M. G. Vallejo,	71	40
Opinion of Board of Commissioners,	73	41
Decree rejecting claim,	83	48
Certificate of Secretary of Land Commission,	85	49
Notice of Appeal,	87	49
Petition for Review,	87	49
Order allowing farther testimony to be taken,	90	51
Deposition of M. G. Vallejo,	90	52
" " Salvador Vallejo,	92	53
" " C. L. Richards,	92	53
" " John Wolfskill,	94	54
" " Demetrio Peña,	99	57
Answer	100	58
Opinion of the Court,	100	58
Decree annulling Commissioner's decision,	108	64
Order granting Appeal, &c.,	110	65
Clark's Certificate,	111	65

Transcript of the Proceedings in Case No. 57,

MANUEL VACA AND FELIPE PEÑA, Claimants,

vs.

THE UNITED STATES, Defendants,

For the Place named "Los Putos."

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this twentieth day of February, Anno Domini one thousand eight hundred and fifty-two, before the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board in the City of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:—

The petition of Manuel Vaca and Felipe Peña, for the place named "Los Putos," was presented and ordered to be filed and docketed with No. 57, and is as follows, to wit:

(*Vide* page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *Aug.* 14, 1852.

On motion of the counsel for the claimants, the following order was granted, to wit:

(*Vide* page 61 of this Transcript.)

SAN FRANCISCO, *Jan.* 17, 1853.

In the same case the deposition of Salvio Pacheco, a witness in behalf of the claimants, taken before Commissioner Harry J. Thornton, was filed:

(*Vide* page 7 of this Transcript.)

SAN FRANCISCO, *Mar.* 12, 1853.

In the same case the deposition of William Wolfskill, a witness in behalf of the claimants, taken before Commissioner Hiland Hall, was filed:

(*Vide* page 8 of this Transcript.)

SAN FRANCISCO, *Aug.* 23, 1853.

In the same case the deposition of Jacob P. Leese, a witness in behalf of the claimants, taken before Commissioner Alpheus Felch, with documents marked *I*, *K*, *M*, *T*, *O*, and *A*, *F*, with translations thereof marked *H*, *J*, *I*, *V*, *P*, annexed thereto, was filed:

(*Vide* page 13 of this Transcript.)

SAN FRANCISCO, *Aug.* 24, 1853.

Case No. 57 called. The counsel for the claimants read the evidence: argued, submitted, and taken under advisement.

In the same case the deposition of John C. Hays, a witness in behalf of the United States, was taken before the Board:

(*Vide* page of this Transcript.)

In the same case the deposition of H. W. Halleck, a witness in behalf of the claimants, was taken before the Board:

(*Vide* page of this Transcript.)

SAN FRANCISCO, *Nov.* 15, 1853.

In the same case, Commissioner Thompson Campbell delivered the opinion of the Board rejecting the claim:

(*Vide* page of this Transcript.)

(*Petition of Juan Man'l Vaca &c.*)

Before the Honorable the Commissioners of the United States to ascertain and settle Private Land Claims in the State of California.

Juan Manuel Vaca and Juan Felipe Peña, citizens of California, give notice that they claim, by virtue of a grant from the Mexican Nation, a tract of land situated in the county of Solano, in said State, known by the name of "Los Putos," lying on the waters of the creek of that name, containing the quantity of ten *sitios de ganada mayor* or square leagues (Mexican measurement), and bounded as follows, to wit: First line, from the northeastern corner of the land of William Wolfkill, by a continuance of the northern line of said land eastward to the tular or marsh land; Second line, from the place last indicated, southerly, along the margin of the tular or marsh land to a certain sansel or willow thicket; thence by a straight line in the direction of the hills called the Tulpines; Third line, from the said northeastern corner of Wolfkill's land, southerly, along the eastern line of said land to its southern corner; Fourth line, from the place last mentioned westwardly by the southern line of Wolfkill's land to the foot of the Sierra or range of hills: Fifth line, from the place last indicated, southerly, along the foot of the Sierra, till by that line and the second line, the before-mentioned quantity of ten sitios be completed.

The claimants respectfully show that they are Mexican citizens by birth, that they emigrated from the Department of New Mexico to California, with their families and herds, in the year 1842, for the purpose of establishing themselves in this Department, according to the laws of the county and the invitation of the Supreme Govern-

ment. That accordingly they were adjudged worthy, from the age of their respective families, the amount of the stock which they wished to pasture, and for their personal services, to receive a concession of the before-mentioned quantity of land, and the same was granted to them on the 27th of January, 1843, by Don Manuel Micheltorena, Governor of the Department of California, and as such authorized to make such grant. The original of said grant is in the archives of the former Governments of California, having been returned as hereinafter stated; and a copy of the same will be herewith filed as soon as it can be procured from said archives. Claimants thereupon entered upon their said granted land and occupied it with their stock, and on the 18th of April, 1844, presented themselves by a petition of said Vaca, pursuant to law, and the directions of their said grant, before the proper magistrate and asked judicial possession and ascertainment of limits of their said land to be given them; which said act, owing to the opposition of said William Wolfkill, who set up a claim for a portion of their said granted land, said magistrate without any fault or laches on the part of these claimants, refused. Whereupon, on the 1st of May of said year, claimants appealed by petition in the name of said Vaca to the Superior authority of the Department, to wit, said Governor Micheltorena, who by an order of the same day directed them to be given juridical possession, according to their said request. (See Exhibit *B C.*) Before said order could be executed, a civil revolution occurred, whereby said Governor Micheltorena was deposed; and by the unsettled state of the country, the lack of established authority, and the continuance of the question in which they were involved with Wolfkill, the claimants were a long time hindered from further proceeding to consolidate and establish their said possession. After various proceedings, of which claimants do not possess any written memorial, in respect of said question between the claimants and said Wolfkill, Governor Pio Pico, on the 27th July, 1845, made an order to the effect that said Wolfkill should retain the land which he claimed, and a new grant should be given to the present claimants, for the location of their land without prejudice to the occupation of said Wolfkill. On the 30th of said July, said Governor, being by virtue of his said office thereto authorized, made said proposed new grant to the claimants, which on the first of October of said year was approved by an act of the Departmental Assembly. By subsequent acts before the said Governor, the claimants and said Wolfkill entered into a full and satisfactory arrangement respecting their said lands, which was approved and signed by the said Governor, who on the 18th of November, 1845, made an order that the said Wolfkill should proceed to Sonoma, and by the Judge of that district be placed in possession of the land that had been conceded to him, and afterwards like proceedings be had in reference to the lands of the present claimants. Before these measures could be accomplished, another civil war arose in the country, and the war between the United

States and Mexico, and the consequent change of government and interruption of proceedings in relation to grants of lands occurred. A copy of said grant of 18th November, 1845, and a copy of the official testimonial of the approval of the same by the Departmental Assembly, and a copy of so much of the record of the other proceedings above mentioned as is in possession of claimants, are herewith presented, marked *E* and *F*.

There is no conflicting grant for said land, or any portion of it, in the knowledge of claimants. The claimants further respectfully show that they are now stricken in years, that the property for which they present this their respectful petition is the sole fruit *fruit* of their long lives of industry and sobriety, and the only support of their large and growing families; that they are unlettered and simple men, unable to read or write their native language, and totally ignorant of the language and laws under which they now live, and that if in their ignorance they have omitted anything which they ought to have done to perfect their title, they still look with confidence to be confirmed, through the justice and magnanimity of the Government to which their allegiance is transferred, in what they owed to the country of that under which they were born.

JONES, TOMPKINS & STRODE,
Attorneys for Claimants.

Filed in office Feb. 20th, 1852.

GEO. FISHER,
Sec'ry.

SAN FRANCISCO, *Jan.* 17*th*, 1853.

On this day, before Comm'r Harry J. Thornton, came Salvio Pacheco, a witness in behalf of the claimants, Juan Manual Vaca and Felipe Peña, Petition No. 57, and was duly sworn, his evidence being given in Spanish, and interpreted by the Secretary.

(*Deposition of Salvio Pacheco.*)

Salvio Pacheco, a witness called on behalf of the claimants, in answer to interrogatories of claimants' counsel, testified as follows. (The Associate Law Agent was present.) My name is Salvio Pacheco; I am of fifty-five (55) years old, and reside at my rancho in Contra Costa. I am a native of California. I am acquainted with the Rancho of Don Manual Vaca and Don Felipe Peña, on the Puntos river, in the County of Solano, which is the same land claimed in this case. Said claimants have their houses on said lands, and live there with their families. They have herds of cattle and horses on the land, and cultivate different parts of it in wheat, barley, and vegetables. They have occupied the land and had their houses and cattle upon it nine or ten years, almost ever since they arrived in California from New Mexico. Some of their sons are

also established on the same tract, with their families. There are five or six different houses on the tract occupied by the claimants and different members of their families.

(Signed) SALVIO PACHECO.

Service accepted.

(Signed) R. GREENHOW,
U. S. Law Agent.

Sworn to and subscribed before me this 17th of June, 1853.

(Signed) HARRY J. THORNTON,
Com'r, &c.

Filed in office January 17th, 1853.

(Signed) GEO. FISHER,
Sec'y.

SAN FRANCISCO, *Feb'y* 26, 1853.

On this day, before Com'r Hiland Hall, came William Wolfskill, a witness in behalf of the claimants, Juan Manuel Vaca *et al.*, Petition No. 56, and was duly sworn, his evidence being given in English. (The U. S. Associate Law Agent was present.)

(*Deposition of William Wolfskill.*)

William Wolfskill, a witness on behalf of the claimants, in answer to interrogatories by claimants' counsel, testified as follows: My name is William Wolfskill; my age, 55 years; residence, Los Angeles. I have a tract of land on the river Puntos, granted to me in 1842. It adjoins the rancho of Pena and Vaca. Those persons and myself had a dispute of location and boundary, which was settled by a compromise, made with the knowledge and authorization of Governor Pio Pico, in the fall of 1845. By that compromise, and the order of the Governor, my lands were directed to be first measured, and afterwards those of said Vaca and Pena. After that time I was not able to procure the juridical measurement and possession during the existence of the Mexican government in this country, and consequently my tract was never measured until during the past summer (1852), when it was surveyed by the Surveyor-General of the United States, pursuant to an order of this Board. The exact location and measurement of said lands of Vaca and Pena, were by said compromise and the order of the Governor, subject to the prior measurement of mine.

(Signed) WILLIAM WOLFSKILL.

Sworn and subscribed before me.

(Signed) HILAND HALL, *Com'r.*

Service admitted.

(Signed) ROB'T GREENHOW,
Ass't Law Ag't, &c.

Filed in office March 12, 1853.

(Signed) GEO. FISHER, *Sec'y.*

(*Deposition of H. W. Halleck.*)

Personally appeared before the Commission to ascertain and settle the Private Land Claims in the State of California, sitting as a Board, this 24th day of August, 1853, H. W. Halleck, a witness in behalf of the claimants, Juan Manuel Vaca *et al.*, case No. 57, who, after being duly sworn, deposeth and saith as follows, to wit:—

Questions.—Mr. Jones, Counsel for the Claimants.

Question 1st. State whether you have ever been the keeper of the archives of the former government of California: and have you been in the habit of examining the Espedientes and the other papers therein relating to the land titles?

Answer. I have.

Question 2d. State whether the maps attached to the Espediente are usually in the handwriting of the Secretary or other officer of the government.

Ans. Usually they are not; sometimes they are in the handwriting of the grantees, sometimes in that of other persons whose names are even not mentioned in the papers.

Question 3d. Examine the map attached to the paper marked 424, and endorsed "Espediente promovedo per Ciudadano Juan Manuel Vaca insolicitud del parage Conocido con el nombre Lehuaytos en Sonoma," and state whose flourishes or rubrics are those on the said map.

Ans. I have examined the said map, and I believe the rubrics are those of Manuel Jimeno. I have compared them with the rubrics of which said Jimeno has sworn to as his own, and I think there is a close resemblance between them. One of those on the map seems to have been very lately made, and if it stood alone I might doubt its genuineness. I think, however, they are both genuine rubrics. I have frequently seen him make his rubric, and have compared in his presence rubrics made by him at different periods, which I think differed more than these.

Cross-Examined by the U. S. Law Agent, Mr. Howard.

1st Cross-Interr'y. State what a rubric is, of which you speak.

Ans. It is a flourish, usually placed at the end of a signature, or under it; it is also frequently used without a signature, and then considered as taking the place of a full signature. It is frequently used in that way in Spanish and Mexican documents.

2d Cross-Int'y. State, if you know, where Jimeno now resides.

Answer. He resides in the City of Mexico.

3d Cross-Int'y. State whether the writing on the map is in the same hand as any in the document.

Answer. I do not think it is.

H. W. HALLECK.

Attest: GEO. FISHER,
Sec'y.

Filed in office Aug. 24, 1853.

GEO. FISHER,
Sec'y.

(*Deposition of Jno. C. Hays.*)

Personally appeared before the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board, this 24th day of August, 1853, John C. Hays, a witness in behalf of the United States, in case No. 57, Juan Manuel Vaca *et al.*, who, after being duly sworn, deposeth and saith as follows, to wit:—

Questions by the U. S. Law Agent.

Quest. 1. Are you the Surveyor-General of the U. S. for California?

Ans. I am.

Ques. 2d. Is the paper shown you now and marked 424, and endorsed "Espediente Promomovido per Ciudadano Juan Manuel Vaca insolicitud de poroge conocido con el nombre de Lehuaytos en Sonoma," one of the documents on file in your office, relating to grants of land?

Ans. It is.

Ques. 3d. Look at the map or deseno attached to same paper, and state whether it is in a different handwriting from the other portions of the same document.

Ans. The handwriting on the map does not appear as the balance of the document, but I know nothing of the paper except as it appears on the document.

Ques. 4. Whether the rubrics or flourishes on the map appear, either or both of them, with the rubric or flourish of Manuel Jimeno on the paper?

Ans. I do think there is some resemblance, but by close examination I do not think they are precisely alike.

(Cross-examined by Mr. Jones, the Counsel for the claimants.)

1st Cross-Int. Are you in the habit of examining the Espedientes or papers relating to land titles on file in your office; and do you know whether it is usual for the maps contained in the said papers to appear in the handwriting of the Secretary or other officer of the Government?

Ans. I am not in the habit of examining them personally; they

are generally examined by the translator of my office. The maps I have not examined enough enable me to know whether they are in the same handwriting as the papers.

JOHN C. HAYS.

Attest: GEO. FISHER,
Sec'y.

Filed in office Aug. 24, 1853.

GEO. FISHER,
Sec'y.

(*Deposition of Jacob P. Leese.*)

OFFICE OF THE COMMISSIONERS OF LAND CLAIMS IN CALIFORNIA.

SAN FRANCISCO, *Aug.* 23, 1853.

This day, before Commissioner Alpheus Felch, came Jacob P. Leese, a witness in behalf of the claimants, Juan Manuel Vaca *et al.*, case No. 57, and after being duly sworn, deposed as follows:—

Question by Mr. Jones for the claimants.

1st Question. What is your name, age, and place of residence? How long have you resided in California?

Answer. My name Jacob P. Leese; my age forty-four years, and I reside at Monterey; I have lived in California twenty years.

2d Question. Are you acquainted with the handwriting of Manuel Micheltorena, Pio Pico, José Maria Covarrubias? If you look at the papers here shown to you and marked as Exhibits *I*, *K*, *M*, and *T*, filed in this case, and having also the initials "*A. F.*" hereon, and say whether the signatures of the above-named persons appearing thereon are their true and genuine signatures.

Answer. I have examined said papers; the signatures of the above-named persons thereon are their several, true and genuine signatures.

3d Question. Examine the paper now presented to you, marked as Exhibit *O*, filed in this case, and having also thereon the initials "*A. F.*" and whether the signature thereon, purporting to be that of Jacob. P. Leese, is your signature, and whether the same was made by you at the time and in the character which appears by said paper?

Answer. I have examined it; it is my signature, and was made at the time and in the character as there appears.

Question by Mr. Howard, Law Agent.

1. Why did you not give the juridical possession and make the survey at the time of your orders, as contained in the above-named Exhibit, marked "*O*," with the initials *A. F.*?

Answer. I did not give the possession in consequence of a con-

flict about the boundaries between Vaca and the adjoining proprietors.

Question 2d. Have you often given juridical possession? and if so, state the method of your proceeding.

Answer. I have often given such possession; my method of proceeding was as follows: The application was made by the grantee of the land; the authority applied to, that is the Alcalde, then gave notice to the persons who held the adjoining lands to appear at a specified time, when juridical possession was to be given; at the time appointed the boundaries were examined in presence of all parties; the alcalde also then examined the title of the grantee and appointed two men as measurers; if he had not a clerk he would have two assistant witnesses, who would sign the documents which were made out. The alcalde then proceeded to measure the land, commencing with the boundary line first described in the title; the measuring was done with a hemp cord of the length of fifty varas; after measuring the first boundary line as near to the compass as possible, the Surveyor continued around the land following the boundary line as described in the title; in case of coming to any water or swamp lands, a calculation was made as near as possible by the eye of the distance across it, and so continued to the place of beginning; after it was completed all was noted down as a record of the same, and was signed by all parties present; that is, by all the adjoining proprietors or persons who appeared for them, in presence of the Alcalde and the assistant witnesses.

3d Question. Was it the custom to use the compass in making such juridical measurements?

Answer. There was no such thing as a surveyor's compass in the country that I could obtain; I used a pocket compass, and got the direction a course by the eye as near as I could; other alcaldes used a pocket compass; I never knew any other compass to be used except in one instance; that was in 1844, when M. O'Farrell was appointed Surveyor by Governor Micheltoreno; there was never any other Government Surveyor, under the Mexican authorities, to my knowledge in California. O'Farrell was appointed for the District of Sonoma. I think it was in August of that year that he was appointed.

4 Question. At whose expense was the juridical surveys made and possession given in California?

Answer. At the expense of the parties.

J. P. LEESE.

Subscribed and sworn to before me, at San Francisco, this 23d day of August, 1853.

ALPHEUS FELCH,
Commissioner.

Filed in office Aug. 23d, 1853.

GEO. FISHER,
Sect'y.

(*Expediente.*) 1845.

Espediente promovido por los C. C. Manuel Vaca y Juan Felipe Armijo, en pretension del parage nombrado los Putoz. 465.

ANGELES, *Agosto* 30 *de* 1845.

Vista la presente peticion que forma este esped'te lo cual consta al Gobrerno, atendiendo á lo que anteriormente se practico para a gracine á los solicitantes connu terreno en la jurisdiccion de Sonoma como lo acredita el despacho adjunto con todo lo demas que se tuvo presente y ver conomo declaro á los Ciudadanos Juan Manuel Vaca y Juan Felipe Armijo dueños en propiedad del parage conocido con el nombre de los Putos en las margenes del rio colindunte al este con el de D'n Guillermo Wolfskill en estencion de diez sitios de ganado mayor.

Librese el correspond'te titulo, tomese razon en el libro respectivo y dirija se este expediente á la Ex'ma Asamblea Departamental para su aprovacion. Pio Pico, Vocal de la Honorable Asamblea y encaryado del Gob'o por Ministerio de la ley lo decreté mandé y firmé doy fé.

PIO PICO.

EX'MO SENOR GOBERNADOR.

Juan Manuel Vaca, Mejicano de nacimiento, por si y á nombre de su compañero D'n Juan Felipe Armijo, ambos residentes en este Departamento ante V. E. con el debido respeto comparesco y dijo; que habiendo transigido amigablemente D'n Guillermo Wolfskill y yo en el litis que por ocupacion de terreno en virtud de concesiones del Gobierno se sucito, á causa de una mala inteligencia; suplico á V. E. que á fin de que se quite toda duda y no dar lugar á que en lo futuro se presente algun pretesto que pudiera causar disgusto, se sirva concederme en union de nu compañero la propiedad del terreno de los *Putos* donde pensamos establecernos á las margenes del rio, el cual colinda á la parte del Este con el parage de D'n Guillermo Wolfskill de cuyo terreno pretendo la estencion de diez sitios de ganado mayor segun y conforme se tuvo á bien agraciarnos por el Superior Gobierno de este Departamento desde el año de mil ochocientos cuarenta y tres, como lo comprueba el despacho que atentamente acompaño; advertiendose que á causa de la larga distancia que hay de a que y la eficacia que quien tener de que el diseño que se forme sea correcto en virtud de la proligidno que debera haber á tiempo que se dé la posesion juridica, no me es accessible presentarlo ahora; pero protesto verificarlo tan luego como quede hecho lo que dejo indicado y hare por que tenga su efecto oportuna minte. A cuya gracia que no dudo alcanzar de V. E. le seré firmemente reconocido. Juro lo

necesario tr'a y suplico se me dispense el uso de papel comun por falta del sellado.

Angeles, Agosto 30 de 1845.

JUAN MAN'L BACA.

Pio Pico Vocal mus antiguo de la Honorable Asamblea del Departament de Californias y encargado del Gobierno del mismo por el Ministerio de la ley.

Por cuanto D'n Juan Manuel Vaca y D'n Juan Felipe Armijo, Mejicanos por nacimiento, han pretendido para sus beneficios personales y el de sus familias el parage conocido con el nombre de los Putos en las margenes del rio colendante al Este con el rancho de D'n Guillermo Wolfskill sin perjuicio de las medidas que se hayan de los ranchos inmediatos concedidos con anterioridad: practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas á nombre de la Nacion Mejicana, he venido en concederles el terreno mencionado declarandoles la propiedad de el por las presentes letras; sugetandose á la aprobacion de la Ex'ma Junta Departamental y bajo las condiciones seguientes :—

1a. Podran cercarlo sin perjudicar las travecias caminos y cervidumbres lo disputaran libre y esclusivamente destinandolo al uso que mas les convenga.

2a. Solicitaran del Juez respectivo q les de la posesion juridica en virtud de este despacho quien tendra cuidado de respetar las antiguas propiedades y demarcara los linderos segun la presente concesion en cuyos lugares pondran sus mojoneras correspond'tes y algunos arboles frutales ó silvestres de alguna utilidad.

3a. El terreno de que se hace donacion es de diez sitios de ganado mayor segun y conforme antes se les habia concedado. El Juez q diere la posesion lo hara medir conforme á ordenanza dejando el sobrante que resulte a la nacion p'a los usos convenientes.

En consecuencia mando que teniendose por forme y valedero el resente titulo se tome razon en el libro que corresponde y se entregue a los interesados para sus resguardos y demas fines.

Dado en la Ciudad de los Angeles, Capital del Departamento de Californias, á 30 de Ag'to de 1845.

MANUEL MICHELTORENA,
Gobernador.

(Quéda tomada razon de este titulo en el libro á que corresponde.)

COMANDANTE GENERAL E YNSPECTOR DEL DEPARTAMENTO DE LAS CALIFORNIAS.

[GOBIERNO DEL DEP'TO (PLACE OF EAGLE.) DE CALIFORNIAS.]

Por cuanto D'n Juan Manuel Vaca, y D'n Juan Felipe Armijo, Mejicanos por nacimiento, han pretendido para sus beneficios personales y el de sus familias el parage conocido con el nombre de Lihuaytos, colindante al oriente con el Rio del Sacramento, al Poniente con la Sierra de Napa, al Norte con el Arroyo de Lihuaytos, y al sur con el sinsun, sin perjuicio de las medidas que se deben hacer a los ranchos inmediatos; practicadas previamente las diligencias y averiguaciones consernientes segun lo despuerto por leyes y reglamentos usando de las facultades que me son conferidas á nombre de la Nacion Mejicana, he venido en concederles el terreno mencionado declarandoles la propiedad de el por las presentes letras; sugetandose á la aprobacion de la Ex'ma Junta Departamental y bajo las condiciones siguientes.

1a. Podran cercarlo sin perjudicar las travecias caminos y servidumbres lo disfrutarun libre y esclusivamente destinandolo al uso que mas les convenga pero dentro de un año fabricarán casa y estará habitada.

2a. Cuando se les confirme la propiedad, solicitáran del Juez respectivo que les de la posesion juridica in virtud de este despacho por el cual se demarcarán los linderos en cuyos lunites pondrá sus mojoneras y algunos arboles frutales ó silvestres de alguna utilidad.

3a. El terreno de que se hace donacion es de diez sitios de ganado mayor segun esplica el diseno que corre agregado en el espediente respectivo. El Juez que diere la posesion lo hará medi conforme á ordenanza que dando el sobrante que resulte á la nacion para los usos convenientes.

4a. Si contravenieren á estas condiciones perderán su derecho al terreno y será denunciable por otro.

En consecuencia mando que teniendose por firme y valedero el puesente titulo setome razon de el en el libro á que corresponde y se entrigue al interesados para su resguardo y demas fines. Dado en la ciudad de los Angeles á veinte y siete de Enero de mil ochocientos cuarenta y tres.

MAN'L JIMENO,
S'rio.

MAN'L MECHELT'A.

ANGELES, *Setiembre* 24 *de* 1845.

Dada cuenta in sesion dehoy con este esped'te á la Ex'ma Asamblea Departamental se mandó pusar á la comision de terrenos baldios.

PIO PICO,
Presid'e.

AUGUSTIN OLVERA,
S'rio.

Ex'mo S'or.

La comision de terrenos baldios se ha hecho cargo del espediente promovido p'r los Ciud's Manuel Vaca y Juan Felipe Armijo, en pretencion del parage conocido con el nombre de los Putos situado en la jurisdiccion de Sonoma, y satisfecha de que las diligencias practicadas en dicho espediente fueron bastantes p'a q. el Superior Gobierno del Departamento les hubiese concedido el mencionado terreno propone á la deliveracion de V. E. el siguiente articulo unico.

Se aprueba la concesion hecha p'r el Superior Gobierno de este Departamento en titulo librado con fha 30 de Ag'to pp'do en favor de los Ciud's Manuel Vaca y Juan Felipe Armijo del terreno conicido con el nombre de los *Putos* cituado en la jurisdiccion de Sonoma in estencion de diez sitios de ganado mayor de conformidad con la ley de 18 de Agosto de 1824, y el articulo 5a del reglamento de 21 de Noviembre de 1828, y bajo la precisa condicion, q'e dentro del termino de cuatro meses contados desde esta fha pondrán en manos del Ex'mo S'or.

Gobernador el diseño respectivo en la intelligencia q'e de no verificarlo asi, quedarán sin derecho al terreno y será denunciable por otro.

Sala de comisiones en la Ciudad de los Angeles, Setiembre 25 de 1845.

FRAN'CO DE LA GUERRA. NARCISO BOTELLO.

Angeles, *Octubre* 1*a de* 1845.

En sesion de hoy se aprobó por la Ex'ma Asamblea Departamental la proposicion del dictamen que antecede mandando se devuelon el espediente original al E. S. Gobernador para los fines convenientes.

PIO PICO,
Presid'te.

AUGUSTIN OLVERA,
S'rio.

En la fha se libró á los interesados la copia respectiva.

Office of the Surveyor-General of the United States for California.

I, Samuel D. King, Surveyor-General of the United States for the State of California, and as such now having in my office, and under my charge and custody, a portion of the archives of the former Spanish and Mexican Territory, or Department of Upper California, do hereby certify that the ten preceding and hereunto annexed pages of tracing paper, numbered from one to ten, inclusive, and each of which is verified by my initials (S. D. K.), exhibit true and copies of certain papers now on file and forming a part of the said archives in my office.

In testimony whereof, I have hereunto signed my name, officially, and affixed my private seal (not having a seal of [L. S.] office), at the city of San Francisco, this 2d day of January, 1852.

SAM'L D. KING,
Su'r-Gen'l Cal.

Filed in office August 5th, 1852.

GEO. FISHER,
Sec'y.

OFFICE OF THE SURVEYOR-GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, Surveyor-General of the United States for the State of California, and as such now having in my office, and under my charge and custody, a portion of the archives, *a portion of the archives* of the former Spanish and Mexican Territory, or Department of Upper California, do hereby certify, that the ten preceding and hereunto annexed pages of tracing paper, numbered from one to ten inclusive, and each of which is verified by my initials (S. D. K.), exhibit true and accurate copies of certain documents now on file, and forming a part of the said archives in my office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, not having a seal of office, at the city of San Francisco, this 2d day of January, 1852.

SAM'L D. KING,
Survy'r Gen'l Calf'a.

Filed in office Aug. 5th, 1852.

GEO. FISHER,
Sec'y.

[The above in the original is crossed.]

(*Translation of Espediente.*)

(Endorsed) Espediente of Citizen Manuel Vaca and Juan Felipe Arimijo, soliciting the place called Los Putos, 465.

ANGELES, 30*th August*, 1845.

In view of the present petition, that forms this Espediente, which is proved to the Government, attending what was previously practised for donating to the settlers the tract in the jurisdiction of Sonoma, as the annexed title proves, and that was represented and ought to have been considered, I declare Citizen Juan Manuel Vaca and Juan Felipe Armijo owners of right of the place known by the name of "Los Putos," on the margins of the river adjoining at the east, that of Don Guillermo Wolfskill, to the extent of ten sitios *de ganada mayor*.

Let the corresponding title be issued, an entry be made in the re-

spective book, and this Espediente be directed to the Departm'l Assembly for its approval.

Pio Pico, member of the Honorable Assembly, and in charge of the government, by the ministry of the law thus decreed, ordered and signed.

I testify.

PIO PICO.

M'T EXCELLENT S'OR GOVERNOR.

Juan Manuel Vaca, Mexican by birth, for himself, and in the name of his companion Juan Felipe Armijo, both of them residents in this Department, before Y. E. with due respect appears and says: that D'n Guillermo Wolfskill and myself, having amicably settled the lawsuit, which for this occupation of the land by virtue of concession from the Government, was raised on account of a misunderstanding, I pray that in order to throw off all doubt, and not to give cause to any pretension being made in the future, which might occasion further disturbance, Y. E. be pleased to concede to me in union with my companion, the ownership of the tract "Los Putos," where we think of settling on the margins of the river, which is adjoining at the east, the place of D'n Guillermo Wolfskill, of which tract I solicit the extension of *ten sitios de ganada mayor* in entire conformity with the donation made to us by the Supreme Government of this Department since the year one thousand eight hundred and forty-three, as shown by the title which I duly annex hereto: observing that on account of the long distance that there is from here, and the efficacy which I wish to have that sketch to be drawn, be correct, and for the accuracy of which there ought to be at the time the juridical possession be given, it is not accessible to me to present it now, but I protest to do so as soon as what I indicated above be performed, and I will endeavor that it may have its effect, opportunity for which favor that I don't doubt to obtain from Y. E. I shall be firmly grateful. I swear the necessary &c., and entreat to excuse the use of common paper, for want of the sealed.

JUAN MANUEL VACA.

Angeles, 30 August, 1845.

Pio Pico, Senior member of the Honorable Assembly of the Department of California, and encharged of the government of the same by the ministry of the law: Whereas, D'n Juan Manuel Vaca and D'n Juan Felipe Armijo, Mexicans by birth, have solicited for their personal benefit, and that of their families, the place known by the name of "Los Putos," on the margins of the river, adjoining at the east, the Rancho of D'n Guillermo Wolfskill, without prejudice to the measurement to be made of the contiguous ranchos heretofore conceded; all the steps and investigations relating thereto having been previously had and performed according to the disposition of

the laws and regulations: exercising the powers which are conferred on me in the name of the Mexican nation, I have conceded to them the said tract, declaring to them the ownership thereof by the present letters, subject to the approval of the M't Excell't Departmental Board, and under the *the* following conditions:—

1*st.* They may enclose it without injuring the crossings, roads *roads* and easements, and shall enjoy it freely and exclusively, applying it to the use that best suits them.

2*d.* They shall solicit the proper judge to give them juridical possession by virtue of this title, who shall take care to respect the old properties, and shall make out the boundaries according to the present concession, in which places they shall put proper landmarks, and some fruit trees or useful forest trees.

3*d.* The tract of which donation is made, is of ten *sitios de ganada mayor*, in entire conformity as heretofore it had been conceded to them. The Judge giving the possession shall cause it to be measured agreeably to ordinance, leaving the surplus for the proper uses of the nation; wherefore, I order that the present title being held firm and valid, entry thereof be made in the corresponding book, and it be delivered to the parties interested for their safety, and other ends.

Given at the office of Los Angeles, Capital of the Department of California, on the 30th of August, 1845.

[SEAL.] MANUEL MICHELTORRENO, Governor, Commanding-General and Inspector of the Department of the Californias.

Whereas, Don Juan Manuel Vaca and D'n Juan Felipe Armijo, Mexicans by birth, had solicited for their personal benefit, and that of their family, the place known by the name of "Lihuaytos," bounded at the east by the Sacramento river, at the west by the Sierra of Napa, at the north by the creek (or arroya) de Lehuaytos, and at the south, by the river Suisun, without injury to the measurements which are to be made of the contiguous Ranchos, all the steps and investigations thereto having been previously had, according to the provisions of the laws and regulations: using the powers that are conferred on me in the name of the Mexican nation, I have conceded to them the said tract, declaring to them the ownership thereof by the present letters, subject to the approval of the M't Excellent Departm'l Board, and under the following conditions:—

1*st.* They may enclose it without injuring the crossways, roads, and easements; may enjoy it freely and exclusively, applying it to the use that best suits them; but within one year, they shall build a house, and it shall be inhabited.

2*d.* When the ownership be confirmed to them, they shall solicit the proper judge to give them juridical possession, by virtue of this title, by whom the boundaries shall be marked out in the limits, of

which they shall put landmarks, and some fruit or useful forest trees.

3*d*. The tract of which donation is made is of ten *sitios de ganada mayor*, as shown in the sketch annexed to the respective Espediente. The judge giving the possession shall cause it to be measured according to ordinance, the surplus thereof to remain for the convenient uses of the nation.

4*th*. If they contravene these conditions, they shall forfeit their right to the tract, and it shall be liable to be denounceable by another.

Whereof I order that the present title being held as firm and valid, entry thereof be made in the corresponding book, and it be delivered to the parties interested for their guard and other ends.

Given at the City of Los Angeles, on the 27th January, 1843.

MANUEL MICHELTORRENO.
MANUEL JIMENO,
Sec'y.

ANGELES, 24*th September*, 1845.

Account having been given at the session of this day of this Espediente to the M't Excell't Departmental Assembly, it was ordered to be referred to the Committee on Government Lands.

PIO PICO,
President.

AUGUSTIN OLVERA,
Sec'y.

The Committee on Government Lands has examined the Expepediente of Citizens of Manuel Vaca and Juan Felipe Armijo, in application for the place known by the name of "Los Puntos," situated in the jurisdiction of Sonoma, and being satisfied that the steps taken in regard to said Espediente were sufficient for the Supreme Government of the Department to grant them the said tract, propose for the deliberation of Y. E. the following article: That the concession made by the Supreme Government of this Department in title issued under date the 30th August last past in favor of Citizens Manuel Vaca, Juan Felipe Armijo, of the tract known by the name of "Los Puntos," situated in the jurisdiction of Sonoma, for the extension of *sitios de ganada mayor*, be approved in conformity with the Law of 18th August, 1824, and the article of the regulations of the 21st of November, 1828, and under the precise condition that within the term of four months, to be computed from this date, they shall put into the hands of the M't Excell't S'or Governor a proper sketch, with the understanding from their not doing so they shall

forfeit their right to the tract, and it shall be liable to be denounced by another.

Hall of Committee, in the City of Los Angeles, 25th Sept., 1845.

FRAN'CO DE LA GUERRA.
NARCESO ROTELLO.

ANGELES, 1*st October*, 1845.

At the session of to-day the proposition of the foregoing opinion is approved by the M't Excell't Departmental Assembly, the original Expediente being ordered to be returned to M't Excell't Señor Governor for the proper ends.

PIO PICO,
President.
AUGUSTIN OLVERA,
Sec'y.

A copy hereof was on the same date issued to the parties interested respectively.

Filed in office August 5th, 1852.

GEO. FISHER,
Sec'y.

(*Exhibit "A. F." annexed to the Deposition of Jacob P. Leese.*)

Ex'mo Señor Gobernador—Guillermo Wolfskill, Mejicano por naturalizacion y vecino de esta ciudad ante V. E. con el debido respito, y bajo los terminos del derecho me presento y digo que en vista del superior decreto de V. E. fecha 24 del ultimo Mayo constante á fojas 14 frente del adjunto expediente ofrecio el Señor D'n Manuel Vaca presentar al juzgado de esta Ciudad los documentos que el Gobierno pidió pura con unos y otros, resolver los justo en el asemto del rancho de mi propiedad que poseia con justo y legal titulo, al norte de este Departamento y del que he sido priondo, quedando á verificarlo dicho Señor por si, ó por su apoderado D'n Agustin Olvera á mediados del presente mes como le verá V. E. á fijas 15 del citado expediente, y como es pusado ya el termino que el Señor Vaca se puso, ocurri ayen al Señor Alcalde 1o de esta Ciudad á ver si se habia cumplido ya y resultó, q en lugar de esto in tampoco el Señor Olvera es tal apoderado, lo que me hace creer que solo se trata de eludir el negocio y hacerme sufrir mas perjuicio y trustornos q los q hasta hoy me tiene originados como es publico, pues dos vinges me ha hecho hacer á Monterey, por que alli residia el Gobierno, y nimca pudo presentar sus documentos, de suerte que si como afortunadamente ahora se haya V. E. en esta Ciudad no sucediera, volveria yo á hacer el mismo camino para ser chasqueado como antez; en tal vertud, siendo considerables los perjuicios que se me han causado y se me están causando con el entorpecimiento de este asunto, y creyendo de las atenciones del Gobierno procurar por

la conservacion y seguridad de las propiedades, vuelvo á ocurrir á V. E. suplicando le tome en consideracion la justicia que me asiste y se serva determinar de una vez el citado asunto de mi rancho, pues en ello recibiré gracia y justicia que repito por conclusion, diguandose aduntirme en este papel comun por falta de sellado.

GUILLERMO WOLFSKILL.

Angeles, Agosto 21 de 1845.

ANGELES, *Agosto* 26 *de* 1845.

Habiendo llegado á esta Capital D'n Manuel Vaca, ocurra laparte q representa, al Señor Alcalde 1o de esta Ciudad para los efectos preveindos en el decreto de este Gobierno de 24 de Mayo ultimo.

PICO.

ANGELES, *Agosto* 27 *de* 1845.

Cumplase lo que ordena la superioridad y hagase comparecer á D'n Manuel Vaca para notificarle el citado decreto. Asi yo Vicente Sanchez Alcalde 1o y Juez de 1a instancia decrete y mandé con los de asistencia segun derecho.

VICENTE SANCHEZ.
Ass'a IGNACIO CORONEL.
Ass'a FRANCISCO R. LOPEZ.

En seginda compareció D'n Manuel Vaca y siendo presente se le notifico el anto q antecede y entendido dijo: lo oye y los presentará cuanto antes: esto contesto y no firmó por no saber lo hice yo con los de asistencia segun derecho.

VICENTE SANCHEZ.
Ass'a IGNACIO CORONEL.
Ass'a FRANCISCO R. LOPEZ.

ANGELES, *Julio* 27 *de* 1845.

Habiendo manifestado á este Gobierno los Señores D'n Guillermo Wolfskill y D'n Manuel Vaca que deseosos de evitar el progreso de el litis que el primero promovió por derecho de propiedad con q se consideraba á una parte de terreno q. estaba ocupando en la jurisdiccion de Sonoma D'n Manuel Vaca, estaban convenidos de libre y espontanea voluntad en que el segundo haria su traslacion con todos sus intereses á la parte del Este del terreno de D'n Guillermo Wolfskill en el rio de los Putos presentando al Gobierno nuevo pedido para que se espediese el titulo correspondiente por ser este el terreno q. legitimamente le pertenece segun su antigua solicitud, quedando el primero en el q. actualmente ocupa; y que para la debida aclaracion tambien impretraria la revalidacion de su titulo; dirijase el presente expediente al Juez de primera instancia de esta Capital para q'e asiente en el la correspondiente diligencia previa citacion de las partes, quienes ante su autoridad haran claro

su convenio firmandolo en testimonio, y concluido esto vuelon al Gobierno para q teniendo el asunto por fenecido se archive en la Secretaria de su despacho. Pio Pico, Gobernador interino de las Californias lo decrete y forme. Doy fe.

PIO PICO.

ANGELES, *Octubre* 28 *de* 1845.

En cumplimiento del superior decreto que antecede, hagase suber y comparecer á los Señores Don Guillermo Wolfskill y Don Manuel Vaca, para que notificados de el contesten, conforme como está dispuesto; y fecho devueloasele al Ex'mo S'or Gobernador para satisfacer su determinacion. Asi zo Vicente Sanchez, alcalde 1o y Suez de 1a instancia decreté, mandé y firmé con los de asistencia segun derecho.

VICENTE SANCHEZ.
Assa. A. F. CORONEL.
Assa. LUIS JORDAN.

ANGELES, *Noviembre* 17 *de* 1845.

En la fecha, comparecieron los Señores Don Guillermo Wolfskill y Don Manuel Vaca, y siendo presentes se les notificó la determinacion superior antecedente y intendidos dijo el S'or Vaca: Que en efecto en eso convenieron y quiere que se cumpla, pero que habiendo reflexionado que al tener este convenio nada se trato de medidus, y considerando que al hacer las del terreno del S'or Wolfskill, abrasarian todo el rio, quedandole á el la parte mas inutil, propone al S'or Wolfskill se midiese desde la orella de la Sierra hasta la de los tulares, y se partiese la deferencia por nutud intre ambos. Alegó el S'or Wolfskill que ya una vez hecho el convenio á presencia del Ex'mo S'or Gobernador, se debió lleone á efecto sin poder entrar en el convenio que le propone el S'or Vaca por que la seria de desmerito al terreno de su propidad. Mas esto no obstante, despues de algunas reflexiones que hicieron las partes, convenieron á proposicion del S'or Wolfskill que se nudan los cuatra sitios que el Gobierno le concedió, segun y conforme manifiesta el titulo y deseño; y que si de esta operacion despues de hecha, resultare que para la parte de ábajo, del S'or Wolfskill en el mismo rio, fuese tan corto o limitado que no preste al S'or Vaca las comodidades necesarius para que sus bienes de campo abreven con amplitud, se obliga el S'or Wolfskill á comprarle al Señor Vaca la parte de terreno que resulte á favor de este dicho señor, siempre que no quiera quedar acupandolo, y que para quitar toda mala inteligencia, si llegue ese caso, en el supuesto que no se convengan en el precio, nombraran dos peritos, uno por cada parte para que lo justiprecien y á cuyo avaluo quedan sugetos.

Este convenieron y firmaron con migo y los de asistencia segun derecho.

VICENTE SANCHEZ,
GUILLERMO WOLFSKILL,
A ruego del S'or D'n Manuel Vaca, por no saber firmar.

LEONARDO COTA.
Assa. A. F. CORONEL.
Assa. JACOBO FRANKFORT.

ANGELES, *Noviembre* 17 *de* 1845.

Remitanse el presente espediente al Ex'mo S'or Gobernador, por estar concliuda su disposicion, y en cumplemiento de lo determinado. Asi yo Vicente Sanchez, Alcalde 1o y prez de 1a instancia, decreté, mundé y firmé.

V'TE SANCHEZ.
Assa. A. F. CORONEL.
Assa. LEONARDO COTA.

En la misma fecha se le remitió al Ex'mo S'or Gobernador, en dos plugos, uno continiendo diez y seis fojas utiles y el otro cinco.

RUBRICA.

ANGELES, *Noviembre* 18 *de* 1845.

Estando ya conformes las partez de Don Guillermo Wolfskill y Don Manuel Vaca, ocurra el primero al juez de Sonoma para que lo pongo en posesion de los cuatro sitios de ganado mayor que le concedió el Gobierno Departamental; evacuada esta posesion ocurrira al mismo Juez la parte de Don Manuel Vaca en pretencion de la posesion del terreno que tambien le ha sido concedido por el mismo Gobierno; y en caso de que á este ultimo no le convenga la ocupacion desu terreno llevese á debido efecto el convenio que ambos partes celebraron ante el alcalde 1o de esta Capital el dia de ayer y consta en este espediente.

Librese testimonio de este á Don Manuel Vaca, y entreguese el original á Don Guillermo Wolfskill. Pio Pico, Gobernador del Departamento de las Californias, asi lo mandé, decreté y firmé de que doy fe.

PIO PICO.
JOSE M'A COVARRUBIAS,
S'rio.

Es testimonio fiel del original que ha sido entregundo á Don

Guillermo Wolfskill. En fé de lo cual lo formo. Angeles, Noviembre 19 de 1845.

JOSE M'A COVARRUBIAS.

ST. B. PICO.

Filed in office March 15th, 1853.

GEO. FISHER,
Sec'y.

To His Excellency the Governor.

SIR: William Wolfskill, a Mexican by naturalization, and a resident of this city, present myself before your Ex'cy with due respect, and in the manner prescribed by law, and say: that in consequence of the Supreme Decree of your Ex'cy, dated the 24th of May last, appearing at page 14th of the Record hereto annexed, Don Manuel Vaca offered to present to the Court, in this city, the documents which the Government called for, in order with all of them to determine that which is just, in the matter of the farm belonging to me, which I held under a just and legal title, to the northward of this Department, and of which I have been deprived, the said gentleman having been been bound to comply therewith, either personally or through his attorney, Don Augesten Olvera; about the middle of this present month, as your Excellency will find at page 15th of the aforesaid Record, and as the period which Mr. Vaca himself appointed, has already gone by—I called yesterday upon His Honor the First Judge of this City, to see whether the same had as yet been complied with—the result of which was that instead of this, Mr. Olvera is not even his attorney; from which I am led to believe that he is merely endeavoring to avoid the matter, and to subject me to more injuries and inconveniences than those which, up to this day, he has, as is publicly known, caused me; he obliged me to make two trips to Monterey, because that was the seat of government, and he has never presented his documents; but as your Ex'cy is, fortunately, in this city at present, should he fail to do so, I would be compelled to make the same journey over again, to be disappointed as before; in this conjunction, the losses which are occasioned me by the delay of this affair being considerable, and believing it to be the aim of the government to adopt measures for the preservation and security of property, I again appeal to your Ex'cy, requesting that you will be pleased to take into consideration the equity of my demand, and to decide at once the matter relating to my farm (rancho); in all of which I shall receive favor and justice; which, in conclusion, I repeat; and hope you will be pleased to admit this in ordinary paper, there being none that is stamped.

WILLIAM WOLFSKILL.

Angeles, August 21st, 1845.

ANGELES, *August 26th*, 1845.

Don Manuel Vaca having arrived at this Capital, let the plaintiff present himself before the First Judge of this city, for the purposes set forth in the decree of this Government dated 24th of May last.

PICO.

ANGELES, *August 27th*, 1845.

Let the above order of His Ex'cy be complied with, and Don Manuel Vaca be summoned to appear, in order to give him notice of the aforesaid decree. Thus I, Vicente Sanchez, First Magistrate of the Primary Court of Claims, decreed and ordered, with the Assistants, as provided by law.

VICENTE SANCHEZ.
Ass't IGNACIO CORONEL.
Ass't FRANCISCO B. LOPEZ.

In conformity with the above, Don Manuel Vaca appeared, and being present, the foregoing act was made known to him; and having understood the same, he said, I have, and will present them immediately. This he answered, but did not sign, not knowing how. I did so with the Assistants, as provided by law.

VICENTE SANCHEZ.
Ass't IGNACIO CORONEL.
Ass't FRANCIS R. LOPEZ.

ANGELES, *July 27th*, 1845.

Messieurs Don Guillermo Wolfskill and Don Manuel Vaca, having signified to this Government that, desirous of putting a stop to the suit which the first-mentioned party instituted for the right of property which he claimed to a portion of the land which Don Manuel Vaca was occupying, within the jurisdiction of Sonoma, they had of their own free will fully agreed in that the second party should remove, with all his interests, to the eastward of the land of Don Guillermo Wolfskill, situate on the river of "Los Putos," presenting to the Government another petition for the grant of the proper title thereon, this being the land which legitimately belongs to him agreeably to his former petition—the first-mentioned party remaining on the land which he now actually occupies—and that for a clear and full understanding in the matter, he also should petition for the reconfirmation of his title. Let the present order be sent to the Judge of the Primary Court of Claims of this Capital, that he may issue thereon the proper juridical summons for the appearance of the parties, who, before His Honor, shall fully and clearly define their agreement, and sign the same under oath; and this having been done, let the same be returned to the Government, who holding the

case as at end, shall have it recorded in the office of the Secretary of State. I, Pio Pico, Governor *ad interim* of the Californias, in witness have decreed and signed.

PIO PICO.

ANGELES, *October* 28*th*, 1845.

In compliance with the foregoing superior decree let Messrs. Don Guillermo Wolfskill and Don Manuel Vaca be summoned to appear, and after hearing the same answer as therein provided, which being done let this be returned to his Excellency, the Governor, agreeable to his direction. Thus I, Vicente Sanchez, First Magistrate and Judge of the Primary Court of Claims, decreed, ordered, and signed, with the assistants as provided by law.

VICENTE SANCHEZ.
Assis't A. F. CORONEL.
Assis't LUIS JORDAN.

ANGELES, *November* 17*th*, 1845.

On this day appeared before me Messrs. Guillermo Wolfskill and Manuel Vaca, who being personally present were informed of the foregoing superior decision, which, having both heard, they did agree as stated, and he so desires to comply with the same ; but that having reflected that at the time of making this agreement nothing was said respecting the measurement of the lands, and that on measuring those of Mr. Wolfskill they would include the entire river, the most useless part remaining as his portion; he now proposes to Mr. Wolfskill that the same be measured, say: commencing at the edge of the mountain as far as that of the *tulares* (swamp), and that the difference be divided into equal parts between both. Mr. Wolfskill alleged that inasmuch as the agreement has already been made in the presence of His Excellency, the Governor, it should be carried out without entering into further agreement, as proposed by Mr. Vaca, because it would be prejudicial to the land belonging to him. However, and notwithstanding this, after some further consideration between the parties, they agreed, at the instance of Mr. Wolfskill, that the four *sitios* which the Government granted him should be measured as set forth in the title and sketch of the same ; and if, from the said measurement after it shall have been made, it should result that the portion below Mr. Wolfskill, on said river, should be so small or limited in extent as not to afford to Mr. Wolfskill the necessary facilities for pasturing his stock conveniently, Mr. Wolfskill obligates himself to purchase from Mr. Vaca the land which shall so result in favor of said gentleman, provided that he does not wish to retain possession of the same; and to do away with any possible misunderstanding which might arise from their not agreeing as the value, they shall appoint two competent appraisers, one by each party, to fairly estimate the value thereof, and to whose award they shall submit. To

this they agreed, and signed the same with me and the assistants, as provided by law.

VICENTE SANCHEZ.
GUILLERMO WOLFSKILL.

At the request of Mr. Manuel Vaca, as he could not sign,
LEONARD COTA.
Assis't A. F. CORONEL.
Assis't JACOB FRANCKFORT.

ANGELES, *November* 17*th*, 1845.

Let this present record be returned to His Excellency, the Governor, in compliance with his order which has been carried into effect. Thus I, Vicente Sanchez, First Magistrate and Judge of the Court of Primary Claims, have decreed, ordered, and signed.

V'TE SANCHEZ.
Assis't A. F. CORONEL.
Assis't LEONARD COTA.

On the same day the said record was handed to His Excellency, the Governor, under two distinct covers, one containing sixteen pages of writing, and the other five pages of writing.

RUBRIC.

ANGELES, *November* 18*th*, 1845.

The parties hereunto, Don Guillermo Wolfskill and Don Manuel Vaca, having come to an amicable adjustment of their differences, the first party shall apply to the Judge of Sonoma, and by him be put in possession of the four square leagues of land [cuatro sitios de ganada mayor] granted to him by the government of the department. When said possession shall have been granted, Don Manuel Vaca, the second party herein, shall apply to the same Judge and claim possession of the land which has likewise been granted him by the same government; and in the event that the occupation of his said land should not meet the views of this last mentioned party, then the agreement entered into by both parties on the day of yesterday before the First Judge of this Capital shall be carried into full effect, and the which appears in this record. Let a copy of this be given to Don Manuel Vaca, and the original be placed in the hands of Don Guillermo Wolfskill.

I, Pio Pico, Governor of the Department of the Californias, have thus ordered, decreed, and signed. In witness whereof.

(Signed) PIO PICO.
JOSE M'A COVARRUBIAS,
Sec'y.

This is a true copy of the original which has been handed to Don Guillermo Wolfskill.

In testimony whereof, I sign the same at Angeles, November 19th, 1845.

JOSE M'A COVARRUBIAS.

Filed in office March 15, 1853.

GEO. FISHER,
Sec'y.

(*Document I, annexed to the Deposition of Jacob P. Leese.*)

Sello primero ocho pesos.

Habilitado provisionalmente por la Aduana Maritima del puesto de Monterey, en el Departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos y cuarenta y cinco.

MICHELTORENA. PABLO DE LA GUERRA.

[AD'A MARIT'A DE MONT'Y. PLACE OF EAGLE.]

Pio Pico, vocal mas antiguo de Honorable Asamblea del Departamento de Californias, y encargado del Gobierno del mismo por el Ministerio de la ley.

Por cuanto D'n Juan Manuel Vaca y D'n Juan Felipe Armijo, Mejicanos por nacimiento, han pretendido para sus beneficios personales y el de sus familias el parage conocido con el nombre de los Putos en las margenes del rio, colindante al Este con el rancho de D'n Guillermo Wolfskill, sin perjuicio de las medidas que se hagan de los Ranchos inmediatos concedidos con anterioridad: practicadas previam'te las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos usando de las facultades que me son conferidas á nombre de la Nacion Mejicana, he venido en concederles el terreno mencionado declarandoles la propiedad de el por las presentes letras; sugetandose á la aprobacion de la Ex'ma Junta Departamental y bajo las condiciones siguientes.

1a. Podrán cercarlo sin perjudicar las travecias caminos y servidumbres lo disfrutáran libre y eschisevamente destinandolo al uso que mas les acomode.

2a. Solicitarán del Juez respectivo que les de la posesion juridica en virtud de este despacho quien tendra ciudado de respetar las antiguas propiedades y demarcará los linderos segun la presente concesion, en cuyos lugarez pondran sus mojoneras correspond'tes y algunos arboles frutales ó silvestres de alguna utilidad.

3a. El terreno de que se hace donacion es de diez sitios de ganado mayor segun y conforme antes se les habia concedido. El Juez que diere la posesion lo hará medir conforme á ordenanza dejando el sobrante que resulte á la Nacion para los usos convenientes.

En consecuencia mando que teniendose por firme y valedero el

presente titulo se tome razon en el libro á que corresponde y se entregue á los interesados para sus resguardos y demas fines.

Dado en la Ciudad de los Angeles Capital del Departamento de Californias á 30 de Julio de 1845.

PIO PICO.

JOSÉ MA. COVARRUBIAS,
S'rio.

Queda tomada razon de este Superior despacho en el libro respectivo.

Angeles, fecha ut supra.

COVARRUBIAS.

Filed in office March 15th, 1853.

GEO. FISHER,
Sec'y.

(*Translation of Grant.*)

Seal first, eight dollars.

Established provisionally by the Maritime Custom House of the Port of Monterey, in the Department of the Californias, for the years one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

MICHELTORENA. PABLO DE LA GUERRA.

[MARITIME SEAL CUSTOM HOUSE OF MONTEREY.]

Pio Pico, the Senior Speaker of the Honorable Assembly of the Department of the Californias, and interested with the Government of the same by the *by the* Supreme Court of Laws:

Whereas, Don Juan Manuel Vaca and D'n Juan Felipe Armijo, Mexicans by birth, have solicited for their personal benefit and that of their families the place known by the name of Los Puntos, on the banks of the river bounding on the eastern boundary of the Rancho of William Wolfskill, without infringing upon the measurements which may be made of the adjacent ranchos previously granted; the preliminary formalities and investigations relative to the same having first been made as provided by the laws and regulations, by virtue of the authority in me vested, and in the name of the Mexican nation, I have granted to them the aforesaid land, declaring by these presents, the ownership thereof to be in them, subject to the approbation of the Most Honorable Assembly of this Department and under the following conditions:—

1st. They shall have authority to fence the same without detriment to the crossings, roads, and easements; they shall enjoy the same freely and exclusively, making such uses thereof as they shall deem best.

2d. They shall solicit from the competent Judge that juridical possession thereof be given them in virtue of this decree; said Judge shall be careful to respect the former possessions, and he shall mark out the limits thereof, agreeably to the present grant, in which places they shall place their proper monuments, and some fruit or other useful trees.

3d. The land of which the grant is made is ten square leagues in extent (de diez sitios de ganada mayor), as originally conceded to them; the Judge, who shall give possession thereof, will cause it to be measured agreeably to the ordinance, reserving the remainder which may arise therefrom to the nation for its proper uses.

Therefore I command that this present title being held both valid and binding, a record of the same be made in the proper books, and that it be delivered to the interested parties for their keeping and other purposes.

Given at the city of Los Angeles, capital of the Department of the Californias, this 30th day of July, A. D. 1845.

PIO PICO.

JOSE M'A COVARRUBIAS,
Sec'y.

A record of this superior warrant has been made on the proper book.

Angeles, date as above.

COVARRUBIAS.

Filed in office March 15th, 1853.

GEO. FISHER,
Sec'y.

(*Document K, "A. F.," annexed to the deposition of Jacob P. Leese.*)

Pio Pico, Gobernador interino del Departamento de las Californias:

La Ex'ma Asamblea Departamental en sesion de hoy ha acordado lo siguiente.

"Se aprueba la concesion hecha por el Superior Gobierno de este Departamento en titulo librado con fecha, 30 de Agosto, procsimo parado en favor de los Ciudadanos Manuel Vaca y Juan Felipe Armijo del terreno conocido con el nombre de los putos cituado en la jurisdiccion de Sonoma en estencion de diez sitios de ganado mayor, de conformidad con la ley de 18 de Agosto de 1824, y el articulo 5o del reglámento de 21 de Noviembre de 1828, y bajo la precisa condicion que dentro del termino de cuatro meses contados desde esta fecha pondrán en manos del Ex'mo Señor Gobernador el diseño respectivo; en la inteligencia que de no verificarlo asi quedáran sin derecho al terreno y sera denunciable por otro."

Y para resguardo de las partes de D'n Juan Manuel Vaca, y D'n Juan Felipe Armijo los hago asi saber.

Dado en la Ciudad de los Angeles en este papel comun por falta de sellado á primera de Octubre de mil ochocientos cuarenta y cinco.

PIO PICO. JOSE M'A COVARRUBIAS,
S'rio.

Filed in office March 15th, 1853.

GEO. FISHER,
Sec'y.

(*Translation of Approval.*)

PIO PICO, Governor *ad interim* of the Department of the Californias.

The most Honorable Assembly of this Department, in its session of this day, has decreed as follows: The concession made by the Supreme Government of this Department in its warrant issued under date of the 30th of August last past, is hereby approved in favor of the citizens Manuel Vaca and Juan Felipe Armijo, to the land known by the name of Los Puntos, situate within the jurisdiction of Sonoma, the extent of which is of *Ten Square Leagues* [Diez Sitios de ganada mayor], according to the law of the 18th of August, 1824, and the article 5th of the Regulations of the 21st of November, 1828, and under the express condition that within the term of four months from and after this date, they shall place in the hands of his Ex'cy the Governor, the plan relating to the same, it being understood that if they should fail in so doing they shall lose their title to the land and it shall be subject to be denounced by another person.

And for the security of the parties herein, Don Juan Manuel Vaca and Don Juan Felipe Armijo, I hereby give notice thereof.

Given at the city of Los Angeles, on this ordinary paper, for want of stamped paper, this first day of October, one thousand eight hundred and forty-five.

PIO PICO. JOSE M'A COVARRUBIAS,
Sec'y.

Filed in office March 15th, 1853.

GEO. FISHER,
Sec'y.

(*Document O, "A. F.," annexed to the Deposition of Jacob P. Leese.*)

Sello Tercero Un Peso.

Habilitado provisionalmente por la aduana maritima del puerto de Monterrey, en el Departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA. PABLO DE LA GUERRA.

[AD'A MARIT'A DE MONT'Y.
PLACE
OF
EAGLE.]

S'R ALCALDE 1o de esta jurisd'n.

José Manuel Baca, vecino de esta demarcacion, dueño del Rancho de *Liuaytos* como mejor proceda endro ante V parezco y digo.

Que como consta del titulo q'e presenta, con la solemnidad y juram'to necésarios tengo en mi dho rancho, diez sitios de ganado mayor de bajo de los linderos q'e esprera dho titulo, y porq'e necesito p'a q'e en todo tiempo conste hasta donde llegan, y si me perjudican ó perjudico á alguno de los circunvecinos á ellas suplico á V se sirva mandar q. precediendo las diligencias acostumbradas, de identidad vista de ojos, y reconocim'to, se proceda con citacion de los circunvecinos á la medida demis dhas tierras, p'a cuyo efecto, nombro desde ahora, y p'a cuando el cuso llegue, p'r medidor, al Ciud'no Julian Gordon, intelig'te en esta materia, y q'e los demas q'e fueren interesados, aparezcan acepten y juren, y in su conformidad se proceda á dhas medidas.

P. F. A. V. suplico q. habiendo por presentado dho documento se sirva mandar hacer como llebo pedido, y fecho q'e sea, se me devuelvan dhos recandos, con las dilig's orig'les q'e se hicieren p'a en guarda de mi dhro, este escrito, y todo lo necesario etc'a.

Sonoma, Abril 18, 1844.

JOSE BAN'L BACA. +

Juzgado 1*a Nominacion.*

SONOMA, *Ab'l* 18 *de* 1844.

No se puede conceder la posesion q'e pide el interesado lita q'e no se confirme la propiedad, q esplica la condicion segiunda del titulo concedido *concedido* p'r el Ex'mo S'r Gobernador y á mas tener q suyetarse á las posesiones de los colindantes, las que aum no se han verificado.

JACOB P. LEESE.

Filed in office March 15th, 1853.

GEO. FISHER,
Sec'y.

(*Translation* "*O.*")

Seal Third, One Dollar.

Established provisionally by the maritime custom-house of the port of Monterey, in the Department of the Californias, for the years one thousand eight hundred and forty-four, and one thousand eight hundred and forty-five.

MICHELTORENA. PABLO DE LA GUERRA.

[MARITIME CUSTOM-HOUSE SEAL OF MONTEREY.]

To the first Alcalde of this Jurisdiction.

SIR: Jose Manuel *Baca*, a resident of this district, owner of the Rancho of "Liuaytos," as in law I may best proceed, I present myself before you and say, that as it appears from the title which I exhibit, with the formality and oath required, that I possess in my *in my* said Rancho an extent of ten square leagues of land [*diez sitios de ganada mayor*], under the boundaries set forth in said title, and as I must know, to serve me now and in all time to come, how far they extend, and whether I am trespassed upon, or I trespass on any of those adjacent thereto, I request your Honor to order, after the customary proceedings in such cases of identity, inspection and survey, and after notice thereof to the neighbors, that my said lands be measured, and for that purpose, I from this day appoint the citizen Julian Gordon as measurer thereof; and for whensoever said measurement may be made, he being skilled in such matters, and that all such others as may be interested herein appear, accept, and swear, and that the said measurement may be carried into effect as provided for by law.

Wherefore, I beg your Honor, that in view of the presentation of said document, you will be pleased to command to be done that which I have asked, and when so done, that the said record be returned to me, together with the original proceedings, which may be instituted for the protection of my rights, making oath to this present writing, and to all other necessary forms of law.

Sonoma, April 18th, 1844.

JOSE MAN'L BACA. +

COURT OF 1ST NOMINATION,
SONOMA, *April 18th*, 1844.

The possession asked by the interested party cannot be granted him until the property shall have been confirmed to him, as provided for in the second stipulation of the title granted him by His Excellency the Governor; and furthermore, as he is bound to respect the possession of his neighbors, which as yet have not been ascertained.

JACOB P. LEESE.

Filed in office March 15th, 1853.

GEO FISHER,
Sec'y.

(*Document T, annexed to the Deposition of Jacob P. Leese.*)

Sello Quinto Un Real.

Habilitado provisionalmente por la Aduana Maritima del Puerto de Monterrey, en el Departamento de las Californias, para los años

de mil ochocientos cuarenta y cuatro, y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERR

MICHELTORENA.

MONTERREY, *Mayo* 1*o de* 1844.

[AD'A MARIT'A DE MONT'Y.
PLACE OF EAGLE.]

El Jues respectivo evocará a si ambos diseños y titulos de Voca y Wiskell, y si fuere cierto lo q'e aleza el suplicante; inmediatamente obligará a aguel a salir del terreno de Vaca, y limitarse al suyo, en el concepto q el Gob'o Supremo Departamental ve la en conserom a cada uno su propiedad, y q caso de resistencia ó desobediencia habrá lugar a otros procedimentos fuertes, y a la responsabilidad del Juez y respecto a la posesion juridica, q'e pretende en este escuto, no está en la facultad del Gob'o mandarla dar, sin q preceda la aprovacion de la Ex'ma Junta Departamental. Mas si podra midersele el terreno y reconocerse sus linderos interim a guella recuyllere a el respectivo titulo.

MICHELT'A.

E. S.

José Manuel Vaca, recino de Sonoma, ante V. E. como mejor halta lugar en dro y con el dibido respeto espongo que en 27 de Enero, del año pp'do se me concidio por el Supremo Gob'o Departamental el terreno conocido con el nombre de Lihuaytos cuyo diseño acompaño, con las condiciones generales; y como una de estas sea que en el termino de un año de bo fabricar casa y cultivarlo, sopina de perder el direcho de propiedad, solicite del Juez de Paz de mi jurisdiccion se me diese la respectiva posesion juridica, pero esta autoridad se nego a hacerlo en virtud que debra esperar la aprobacion de la Ex'ma Asamblea Departamental segun el sentido de otra de dechas condiciones (requesito que quira por olvido ha perdonado á otros aquines ha dado posesion), y como entre tanto consigo aquella superior aprovacion puede muy bien cualesquiera otro individuo de mala fé quererse usurpar un propiedad como lo pretende ya el estrangero Wiskell, quienes sin embargo de una orden del Juez para que desocupe miterreno si radicó y permanece en el impunemente. Me rea en la necesidad de recurrer a V. E. suplicandole se digne mandar que el Juez de Paz de mi Jurisdiccion me dé la posesion respectiva, sin perjuicio de sugetarme á la aprovacion de la E'ma Junta Departam'tal y que igualm'te haga previa la debida informacion que el estrangero Wiskell, sulga de me terreno dejandome en

completa y pacifica posesion de el, P. F. A. V. E. suplico se sirvá prover como pido en loque recibire justicia y gracia.

Monterrey, Mayo 1o de 1844.

J'E MAN'L VACA.

Filed in office, March 15, 1853.

GEO. FISHER,
Sec'y.

Seal Fifth One Real (12½ cts.)

Established provisionally by the Maritime Custom House of the port of Monterey in the Department of the Californias, for the years one thousand eight hundred forty-four, and one thousand eight hundred and forty-five.

MICHELTORENA.

PABLO DE LA GUERRA.

(*Translation of T.*)

MONTEREY, *May* 1*st*, *A. D.* 1844.

[MARITIME SEAL. CUSTOM HOUSE, MONTEREY.]

The Judge having cognizance of this case shall send for the plans, and both of Vaca and Wiskill, and of that which the petitioner alleges should prove to be true, he shall at once compel the latter to quit the land belonging to Vaca, in as much as the Supreme Government of the Department looks to the preservation of the property of every one of its citizens, and that in the event of resistance or disobedience, other and stronger measures will be adopted, for which the Judge shall be held accountable, and *and* with regard to the juridical possession which is claimed in this writing, the Government is not authorized to order it to be given without the previous approbation thereof by the most Honorable Assembly of the Department. However, the land may be measured for him, and its boundaries ascertained that meanwhile.

MICHELTO'A.

MOST EXCELLENT SIR.

Jose Manuel Vaca, a citizen of Sonoma, as far in law he may be entitled, and with the due respect presents himself before your Ex'cy and says that on the 27th day of January of the year last past, the land known by the name of "Lehuaytos" was granted to me by the Supreme Government of the Department, a plan of which I send herewith, with the general conditions of the same, and as one of these was that I should build a house thereon and cultivate the ground, on pain of losing the right of property thereto, I solicited from the Justice of the Peace of my jurisdiction, that juridical possession of the same might be given me, but that functionary declined doing so, upon the ground that I should await the approbation of the most

Honorable Assembly of this Department, agreeably to the intent of another of said conditions (a requisite which perhaps from forgetfulness he has overlooked in others to whom he has given possession, and as in the interim of my obtaining that higher approbation, any other person may deceitfully desire to usurp my property as the foreigner Wiskell already attempts to do, who, notwithstanding the order of the Judge to quit my land, has *settle* upon it and still remains thereon with impunity, I find myself under the necessity of appealing to your Ex'cy, entreating you to be pleased to direct the Justice of the Peace of my jurisdiction to give me possession of the same without compelling me to await the approbation of the most Honorable Assembly of the Department; and likewise to cause, after due information therein, the stranger Wiskill to quit my land, leaving me in full and peaceful possession thereof. Wherefore I pray you to decree as I ask, in all of which I shall receive justice and favor.

Monterey, May 1st, 1844.

J'N MAN'L VACA.

Filed in office March 15th, 1853.

GEO. FISHER,
Sec'y.

(*Expediente.*)

Espediente Promovido por Ciudadano Juan Manuel Vaca en solicitud del parage conocido con el nombre de LIHUAYTOS EN SONOMA. 424.

SONOMA, *Jun'o* 6, 1843.

Concedo provisionalmente a D. Juan Manuel Baca y las fam's q conduce el terreno que se menciona, sugetandose a las medidas de los Ranchos colindantes, y a recabar los titulos de estilo con el Gob'o Politico Departamental.

VALLEJO.

S'OR COMAND'TE G'RAL.

El Ciudadano Juan Manuel Baca originario del Departam'to del Nuevo Mexico y avecindado en la Alta California ante V. E. con el debido respeto y en la mejor forma se presenta y dice, q habiendo abandonado su puis natal y adoptar este, en virtud de las garantias q V. E. opreció al q'e subscribe desde el año de 1837 de darle terrenos en colonizacion &'ra ha llegado por fin á esta frontera con algunas familias y solicita el parage de Lehuaytos lindando al sur con el suisun, al Norte con los putos, aloriente con los esteros q forman la bahia interior del estrecho de cargumes constando de diez sitios de ganado mayor por tanto.

A V. E. pide y suplica atienda a su solicitud por las razones expu-

estas, y adunta esta en papel comun por no haver en este lugar del sello q'e corresponde.

Sonoma, Junio 6 de 1842.

JUAN MANUEL BACA.

ANG'S, *Enero* 13 *de* 1843.

Ynf'e el S. S'rio del Gob'o D'n Man'l Jimeno.

MICHELT'A.

EX'MO S'OR.

Juan Manuel Vaca vecino de la demarcac'n de Sonoma ante V. E. en la mas bastante forma y como mas haya lugar en derecho digo. Que haviendo ingresado a este Departamento con un numero respectable de familias q traje de Nuevo Mejico, me concidio el S'or D'n Guadalupe Vallejo el titulo provision'l q dividamente acompaño con la condicion de q ocuriere al Supreme Govierno departam'l a pedir confirmase la propiedad; mas como la distancia en q'e me hallo es enonne, y dificultoso el pasar con vievidad no occurri al momento. Hoy q he conseguido el paso y q V. E. se halla a la cabeza del Govierno acudo a la notoria beinguidad de V. E. p'a q'e en uso de sus amplias facultades me conceda la propiedad de diez sitios que obtenga, en los que procurare cumplir conlo prevenido por las leyes y cultivar el terreno con empeño. Por Canto A. V. E. suplica haga como pide en lo q recivire gracia juro no ser de malicia [4]y lo necesario &'ra serviendose admitir la presente en papel comun por falta del sellado.

Ang's, En'o 13 de 1843.

JUAN MANUEL BACA.

SENOR GOBERNADOR.

El terreno que se solicita esta en estado de concederse segun el informe del S'r D'n Guadalupe Vallejo y puede darsele lo estencion que se menciona atendiendo a la laboriosidad é interes del pretendiente y familias que loa companan pero antes de todo parece necesario que el interesado acompane el diseño del terreno.

Lo espuesto queda a la disposicion de V. E.

Angeles, 14 de Enero de 1843.

MAN'L JIMENO.

[For plan see original, page 65.]

OFFICE OF THE SURVEYOR-GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, Surveyor-General of the United States for the State of California, and as such having in my charge and custody a portion of the archives of the former Spanish and Mexican Territory

or Department of Upper California, by virtue of the power vested in me by law, do hereby certify, that the five preceding and hereunto attached pages of tracing paper, numbered from one to five inclusive, exhibit a true and accurate copy of a certain document now on file, and forming a part of the said archives in this office.

In testimony whereof I have hereunto signed my name
[L. S.] officially, and caused my seal of office to be affixed, at the city of San Francisco, the 24th day of August, 1853.

JOHN C. HAYS,
Sur'r-Gen'l Cal.

Filed in office August 24th, 1853.

GEO. FISHER,
Sec'y.

OFFICE OF THE SURVEYOR-GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, Surveyor-General of the United States for the State of California, and as such now having in my charge and custody a portion of the archives of the former Spanish and Mexican Territory, or Department of Upper California, by virtue of the power vested in me by law, do hereby certify, that the five preceding and hereunto attached pages of tracing paper, numbered from one to five inclusive, exhibit a true and accurate copy of a certain document now on file, and forming a part of the said archives in this office.

In testimony whereof I have hereunto signed my name
[SEAL.] officially, and caused my seal of office to be affixed, at the City of San Francisco, the 24th day of August, 1853.

JOHN C. HAYS,
Surv. Gen'l Cal.

Filed in office Aug. 24th, 1853.

GEO. FISHER,
Sec'y.

[The above in the original is crossed.]

Record moved by citizen Juan Manuel Vaca, in soliciting the place known with the name of "Lehuaytos," in Sonoma.

424.

(*Translation of Exhibit Z.*)

Señor Commandant General. The citizen Juan Manuel Vaca, native of the Department of New Mexico, and established in Alta California, before Y. E. with due respect, and in the best form, presents himself and says: That having abandoned his native country, and adopted this, in view of the guarantees which Y. E. offered to him who subscribes since the year 1837, to give him lands in California colonization, &c., has finally arrived at this frontier with some

families, and solicits the place of Lihuaytos, bounded at the South the Suisun, at the North with the Puntos, at the East with the Estuaries that form the interior Bay of the Straits of Carquenez, consisting of ten sitios of ganada mayor. Wherefore to Y. E. he asks and petitions that he will attend to his petition, for the reasons expressed, and that he will admit this on common paper, there not being at this place any of the corresponding stamp.

Sonoma, June 6th, 1842.

JUAN MANUEL BACA.

SONOMA, *June 6th*, 1842.

I grant, provisionally, to Manuel Baca, and the families which he brings, the land that is mentioned in this petition, subject to the measurement of the adjoining ranchos, and to apply for the usual title from the Political Departmental Government.

(Signed) VALLEJO.

ANGELOS, *January* 13, 1843.

Let the Secretary of the Government, Don Man'l Jimeno, inform.

MICHELT'A.

MOST EXCELLENT SIR:

I, Manuel Vaca, citizen of the District of Sonoma, in due form and in the manner prescribed by law say before your Excellency, that having come to this Department with a respectable number of families, which I brought from New Mexico, Senior Don Guadalupe Vallejo granted me the provisional title, which is hereto duly annexed, with the condition that *that* I should apply to the Supreme Departmental Government, to solicit the confirmation to me of the property: but as the distance is very great, and it was extremely difficult to go immediately, I did not proceed at the moment. Now that I have been able to come, and Your Excellency is at the seat of Government, I address myself to Your Excellency's well known benignity in order that, in use of Your Excellency's most ample powers, you may grant me the property of ten *Sitios*, which obtained, I should endeavor to comply with the provisions of the law, and cultivate the land with industry. Wherefore I beseech your Excellency to do according to my petition, in which I shall receive favor, swearing not to proceed from malice, and all that is necessary, &c., your Excellency being pleased to admit the present petition on common paper, for lack of the stamped.

Angeles, Jan. 13, 1843.

JUAN MANUEL BACA.

SENIOR GOVERNOR:

The land solicited is in a condition to be granted *to be granted*, according to the information of Señor Don Guadalupe Vallejo, and

may be given to the extent which is mentioned, considering the great industry and property of the petitioner, and families which accompany him; but, first of all, it appears necessary that the party interested annex the plat of the land.

The matter above stated remaining at the disposition of Your Excellency.

Angeles, 14 January, 1843.

MAN'L JIMENO.

Filed in office Aug. 24, 1853.

GEO. FISHER,
Sec'y.

(*Order of Survey.*)

For the purpose of determining with precision and certainty the limits and boundaries of the land claimed by Manuel Vaca and Felipe Pena, in the petition No. 57 pending before the Commissioners, it is on motion by the counsel the of claimant ordered that an initiatory survey, under the superintendence of the United States Surveyor-General of California, be made of the land known by the name of Setiostos or Pentos, to the extent of ten sitios de ganada mayor, within the limits of the now Sacramento, the Sierra of Napa, the Creek of Lehmaytos or Pintos, and the Suisun, and adjoining the lands of William Wolfskill, in the State of California, locating the said quantity of ten leagues square or sitios, according to the claim of the said Vaca and Pena, and having reference to the sketch or plan annexed to his petition, and the description and calls of their several grants, but in such manner as to confine said location within the said limits, and to include in the survey to be made the said quantity of ten sitios.

But this order is not in any manner to determine as against the United States either the question of title, the construction of the grant, the location, boundaries, or extent of the land to which the claimants may be entitled.

Filed in office Aug. 14th, 1852.

GEO. FISHER,
Sec'y.

(*Certificate of M. G. Vallejo.*)

M. G. VALLEJO, CORON'L DE CABALLERIA.

Certifico: que el parage conocido con el nombre de Luguaytos fue concedido á D. Manuel Bacas por el que suscribe cuando estubo de director de la colonizacion de esta frontera. Asimismo certifico que el parage de los Putos se concedio á Mr. Wulfsquil colindante con el prim'o aunq'e en el mismo rio hacea el Saural ó desembocadero de la bahia de Suysun.

Y f'a que conste doy el presente á pedim'to del interesado f'a los fines q'e le convengan en Sonoma á 4 de Agosto de 1845.

M. G. VALLEJO.

Filed in office March 15th, 1853.

GEO. FISHER,
Sec'y.

(*Opinion by Com'r Campbell.*)

JUAN MANUEL VACA AND JUAN FELIPE PENA
vs.
THE UNITED STATES.

Los Puntos, containing ten leagues.

The papers filed in this case present the following state of facts, to wit: On the 6th day of June, 1842, Juan Manuel Baca (Vaca) presented his petition to Commandant General Vallejo, asking him for a grant of ten leagues of land for himself and some families, in whose behalf he also petitioned; General Vallejo replied to this petition by making a marginal note of concession of the land asked for to the petitioner and the families he had brought with him. This concession contains the proviso that the concession is made subject to the measurement of the adjoining Ranchos, and that the petitioner shall apply to the Political Departmental Government for the usual title. No further notice seems to have been taken of this concession made to Baca for the benefit of the families referred to in his petition. The next proceeding is for a grant for the same place called Lehuaytos made by Governor Micheltorena to one Manuel Vaca and Juan Felipe Armijo. This grant bears date January 27th, 1843. The next proceeding, as appears from papers on file, is an agreement judicially entered into between one William Wolfskill and Don Manuel Vaca for an arrangement of their boundary lines, which seemed to conflict with each other. In this proceeding it was agreed that Vaca should remove with all his interests to the eastward of the lands claimed by Wolfskill situated on the river "*Los Potos*," and that he (Vaca) should petition anew for a grant of the proper title therein, which land legitimately belonged to him agreeably to his former petition. In pursuance of said agreement the said Juan Manuel Vaca for himself, and in the name of his companion, Juan Felipe Armijo, on the 30th day of August, A. D. 1845, petitioned Governor Pio Pico to concede to him, in union with his companion, the ownership of the tract "Los Potos," which tract he describes as adjoining on the east the place of Don Guillermo Wolfskill, containing ten square leagues, which he represents in his petition is in entire conformity with the donation made to them in the year one thousand eight hundred and forty-three, as the despatch which he owned fully verified; the despatch referred to is the grant made by

Governor Micheltorena of that date. On the same day, to wit, August 30, 1845, Governor Pio Pico made his marginal note of concession, in which he refers to the previous grant made by Governor Micheltorena, and directs that the corresponding title be issued. The title which issued in conformity with this decree, and which is on file, and made part of the evidence in this case, bears date the 30 of July, 1845. This is evidently a mistake. It should be the 30th of August. It further appears that the grant issued by Governor Pico was on the 1st day of October, 1845, approved by the Departmental Assembly under the precise condition that within four months from the date of approval the grantees should file a map of the premises granted with the Governor, with the understanding that, if they failed to file such map within the time prescribed, their right to the tract should be forfeited, and the land would be liable to be denounced by another. It is not to be overlooked that in all the several concessions and grants which it seems were made to the parties of the land claimed, the precise condition was inserted was to be without injury to the *measures to be* made of the contiguous ranchos which had been previously conceded. It is further shown by papers and documents on file that before the agreement between Wolfskill and Vaca had been judicially confirmed, and subsequent to the issuing of the grant by Governor Pio Pico, one of the parties, Don Manuel Vaca, refused to carry out the terms of the agreement, on the ground that he had been deceived in the location of the land which he had agreed to take as his part, whereupon another agreement was made and judicially sanctioned between the parties to the effect that the four leagues which the Government had granted to Wolfskill should be measured as set forth in the title and sketch of the same, and if, after such measurement, it should turn out that the portion allotted to Vaca should be too small as not to afford him facilities for pasturing his stock, then Wolfskill obligated himself to purchase at a fair valuation the land which might so result to Vaca. The agreement, on the same day it was made, was handed to the Governor, who, on the 18th day of November, A. D. 1845, made the following decree or order: The parties hereunto, Don Guillermo Wolfskill and Don Manuel Vaca, having come to an amicable adjustment of their differences, the first party shall apply to the Judge of Sonoma and by him be put in possession of the four square leagues of land granted to him by the government of the Department; when such possession shall have been granted, Don Manuel Vaca, the second party herein, shall apply to the same Judge and claim possession of the land which has likewise been granted him by the same Government, and in the event that the occupation of the said land should not meet the views of this last mentioned party, then the agreement entered into by both parties on the day of yesterday, before the Judge of this capital, shall be carried into full effect. It also appears that Jose Manuel Vaca, by his petition bearing date the 18th of April, 1844, applied to the First Alcalde of the

Jurisdiction of Sonoma for the juridical measurement of the ten leagues of land which had been granted to him in the preceding year by Governor Micheltorena, to which the Alcalde made the following reply:—

COURT OF 1ST NOMINATION,
SONOMA, *April 18th*, 1844.

The possession asked for by the interested party cannot be granted him, until the property shall have been confirmed to him, as provided for in the second stipulation of the title granted him by his Excellency the Governor, and furthermore, as he is bound to respect the possessions of his neighbors, which, as yet, have not been ascertained.

(Signed) JACOB LEESE.

On the 1st day of May, A. D. 1844, Jose Manuel Vaca addressed a communication to Governor Micheltorena in regard to the refusal of the Alcalde to order the juridical measurements and possession asked for by him in his said petition, and in which he makes the following statement, to wit: That on the 27th day of January of the year last past, the land known by the name of "Lehuaytos," was granted to me by the Supreme Government of the Department, a plan of which I send herewith, with the general conditions of the same, and as one of these was that I should build a house thereon, and cultivate the ground, on pain of losing the right of property thereto, I solicited from the Justice of the Peace of my jurisdiction that juridical possession of the same might be given me; but that functionary declined doing so, upon the ground that I should await the approbation of the Most Honorable Assembly of this Department, agreeably to the intent of another of said conditions, &c. To this communication Governor Micheltorena replied, and, amongst other things, he says that, with regard to the juridical possession which is claimed in this writing, the Government is not authorized to order it to be given without the previous approbation of the Most Honorable Assembly of the Department; but he also says that, in the meantime the land may be measured and its boundaries ascertained. The judicial proceedings between Vaca and Wolfskill heretofore referred to, concluded the difficulty between those parties; but there is no evidence which tends to show that any juridical measurement of the said tract was ever made by the Mexican authorities, and there is no proof that any of the adjoining tracts was ever judicially measured, or their boundaries designated in any way. It is proved by the deposition of William Wolfskill, on file in this case, that he has a tract of land on the river Potos, which adjoins the Ranchos of the claimants; that he had a dispute with them (claimants), of location and boundary, which was settled by a compromise, made with the sanction of Governor Pico, in the fall of

1845, by which compromise and the order of the Governor his lands were *were* directed to be first measured, then the land of Vaca and Pena were to be measured.

He further states in his deposition that he was not able to procure the juridical measurement and possession of his lands during the existence of the Mexican Government in this country, and that his tract was never measured until the summer of 1852, when it was surveyed by the Surveyor-General of the United States for this State, and that the exact location and measurement of said lands of Vaca and Pena were, by said compromise and the order of the Government, subject to the prior measurement of his lands. It is further proved by the deposition of Salvio Pacheco that the claimants in this case occupied the premises claimed for the last nine or ten years; that they have houses on the land and live there; that they have herds of cattle and horses on the land, and cultivate different parts of it in wheat, barley, and vegetables; that some of their sons are also established on the same tract with their families, and that there are five or six different houses on the tract occupied by the claimants and different members of their families. The signatures attached to the several documents and papers adduced by the claimants are all satisfactorily proved to be genuine. There are other depositions on file both on the part of the claimants and the Government, but their contents are not deemed to be material. There is one point which it may well to notice before I proceed to an investigation of the main question in the case, although it is not very material in any point of view in what way it is decided.

It has been insisted on the part of the Government that the map which is found amongst the papers is not sufficiently proved by the certificate of the Surveyor-General, and that there is no proof that the map on file was furnished in compliance with the condition imposed by the approval of the Departmental Assembly. It is true the Departmental Assembly made the condition of furnishing a map within a certain period of time essential to the validity of their approval; without inquiring into their authority to impose any such condition, I am clearly of opinion that sufficient appears in the papers to justify the conclusion that the same map, which is now in the archives, was not only placed there by the party in interest, but that it was there before, and at the time the Departmental Assembly made their approval. It will be remembered that the proof shows that two grants were made, one by Micheltorena in 1843, and the other by Pio Pico in 1845; and that it was Pico's grant which the Assembly approved. By reference to the paper containing the communication of Jose Manuel Vaca, addressed to Governor Micheltorena, bearing date the 1st of May, 1844, it will be found that reference is there made to a plan of the tract in question. In the following words he says, "that on the 27th day of January of the year last past, the land known by the name of 'Lehuayos' was granted to me by the Supreme Government of the Department, a plan of which

I send herewith, with the general conditions of the same." The plan here referred to I have no doubt is the map now found in the archives. It was sent to Governor Micheltorena after he had made the grant, and was doubtless there at the time Pico made *made* his grant, but was not made a part of the Espediente which went before the Departmental Assembly. The Assembly no doubt considered a plan of the premises a necessary and indispensable requisite of the law, and instead of refusing to approve altogether, as they might have done, they made the conditional approval already referred to. The land granted was first known by the name of "Lehuaytos," but after the arrangement had been made between the claimants and Wolfskill, it took the name of "Los Putos," by which name it is *it is* designated in the grant made by Governor Pico; the petition is presented in the names of Juan Manuel Vaca and Juan Felipe Peña; both the grants on file were made to Juan Manuel Vaca and Juan Felipe Armijo; how the name of Pena came to take the place of Armijo does not appear, and has not been explained.

The first question which presents itself is, whether the land claimed was severed from the public domain by authority of the Government, from which the claim is derived, at the time the jurisdiction of that Government ceased and the jurisdiction of the United States attached. For a correct understanding of the intention of all the parties to the grant on which the claimants base their rights it is necessary to consult the precise language by which the boundaries are defined; on the grant made by Micheltorena the description runs as follows: "for the place known by the name Liuaytos, bounding at the east by the Sacramento River, on the west by the Sierra of Napa, on the north by the creek 'de Liuaytos,' and at the south by the river Suisun, without injury to the measures which ought to be made of the contiguous Ranchos." The second grant for the same place, although by a different name, made by Pico, is for the place known by the name of "Los Putos," on the margin of the river adjoined at the east with the Rancho of Guillermo Wolfskill, without injury to the measures of the contiguous ranchos heretofore conceded. It will be seen that the boundaries within which the ten leagues were to be located are not so specifically described in the grant made by Pico, as they are in the grant made by Micheltorena. The description of the boundaries as presented on the map filed in the case corresponds accurately with the description given in Micheltorena's grant.

The conditions annexed to both grants are absolutely the same, and the third condition in each grant requires that the Judge giving the possession shall cause it to be measured, leaving the surplus to the nation for its uses. The counsel for the claimants, in a brief which they have recently filed, rely upon the boundaries as *as* described in the grant made by Micheltorena, and after enumerating them they say: "These boundaries are all natural plains and distinct, and there is not the least difficulty in ascertaining the lands granted. If they

had assumed the position that there was not the least difficulty in ascertaining the boundaries within which the lands granted were to be located, there would have been no difference of opinion between us; but the error of the position consists in not making the distinction which the law makes between a general and a located description of the lands granted. The natural boundaries referred in the grant, are extended to embrace a particular region of country, out of which the grant is to be satisfied. It was therefore for the Mexican authorities to locate the ten square leagues of land mentioned in the grant, on any part of the entire tract lying within the boundaries therein described; but until this was done there was no location made, no severance of the particular ten leagues granted from the mass of the public domain had taken place, and no right of private property had attached to any particular spot or place. The Supreme Court of the United States has in so many cases established the doctrine here laid down, that it is no longer an open question. These authorities are fully quoted and referred to in the opinion which I delivered in the case of Huber *vs.* the United States, hetofore decided by the Commission, that I deem it unnecessary to recapitulate: the doctrine is fully discussed, and clearly laid down in the following authorities: 10 *P.* 331; 15 *P.* 184, 215, 275, 319; 16 *P.* 159, 160, and 11 *How.* 127. It will certainly not be contended that it was the intention of the Government to give the grantee all the land lying within the boundaries described in the grant; yet it would seem such is the view taken by the counsel in their brief. The boundary on one side is the Sacramento river; this is certainly very indefinite; the quantity lying on that river is not stated; there is no point fixed where a Surveyor could begin to measure the land; the other three sides are bounded by great natural objects equally indefinite in extent, evidently embracing a much larger quantity of land than the grant calls for. The Governor did not know the quantity embraced in the limits of his grant, and for that reason he required the officer who should make the measurement, to mark off the precise quantity granted, leaving the surplus to the nation. But the Governor did not stop here; the party was enjoined not to infringe upon the measurements which were to be made of the adjacent ranchos previously granted to other parties, and the measurement of those Ranchos was a condition precedent, which had to be performed before the measurement and location of the claimants could be made; Manuel Vanca represents to the Governor that his boundaries are unknown, and complains of the Alcalde because he did not order the measurement prayed for his petition. The Governor, in his reply, sustains the Alcalde in his refusal to order a measurement of the land, and in express terms says, that the Government had no power to order judicial possession to be given until the Assembly had approved the grant, but that in the meantime he might have the lands measured. If the natural boundaries as described in the grant, and represented on the map, were intended as the limits of the land granted,

no judicial measurement would have been necessary, and the reservation of the surplus to the nation was an idle and unnecessary ceremony. But it is clear that neither the Governor nor the parties interested, considered the grant in that view. Manuel Vaca, the party who transacted all the business, expresses his fears to the Governor, in his communication of the 1st of May, 1844, that for want of having his grant measured, and its boundaries ascertained, he may lose his right, under the condition which required him to build a house, and cultivate the land; this condition he could not perform until his land was measured and its boundaries ascertained: he may lose his right under the condition which required him to build a house and cultivate the land; this condition he could not perform until his land was measured and his boundaries defined. The lawsuit which he had with Wolfskill, was caused by his taking possession before any measurement, either of his own lands, or the lands of the adjacent proprietors had been made. Wolfskill had received a previous grant of four leagues of land, to be located within certain boundaries, one of which was the r'o Los Putos, but before his land was measured and his boundaries fixed, the claimants entered into the possession of their grants: Wolfskill alleged that they were trespassing upon him, and instituted a judicial proceeding against them, which terminated in the claimants agreeing to move to another part of the country, with the understanding that if the part to which they moved would, after the Wolfskill boundaries were fixed, prove to be insufficient, the latter was to purchase their right at a fair valuation. Wolfskill, in his deposition on file, states that his lands were never measured during the existence of the Mexican Government in this country, and there is no proof that any judicial measurement was ever made of the lands of the claimants; consequently they remained, at the time the change of Government took place, in precisely the same condition they were at the date of the grant in 1843, and by the terms of the treaty with Mexico, passed to the United States with the mass of the other public lands. It is insisted in the brief filed by the claimants' counsel, that the claimants did all they were required to do, to procure the measurement of the land they were authorized to locate, and that the neglect is attributable to the neglect of the Mexican Government, and not to the claimants. If the condition of location was a subsequent condition which the party was required to perform, and he was prevented from doing so by the act of the grantee, then the law would excuse the performance of the condition; this rule is clearly laid in the Anedonde case, 6 *Pil.* 745: but the counsel have wholly misapprehended the question raised by the facts in the present case, and have made a wrong application of the rule as above laid down. In a case like the one before us, where there is no description of the land granted, and no survey, measurement, or identity made by a competent authority, it is wholly immaterial whether such neglect is the fault of the grantor or granted, a severance of the tract granted from the other lands being indispensable to the

creation of a right of private property, it is plain that without such a severance the party can take nothing by his grant, and he has no right that could be maintained in a Court of Justice. The most solemn deed, with every sanction which the law can give, if the subject conveyed is not identified, confers no right of property, and is wholly valueless in the hands of the person for whose benefit intended to be made. Chief Justice Marshall, in his opinion in the case of Cherowith *et al.* vs. Lessee of Haskell *et al.*, 3 *Pet.* 96, says: It is an obvious principle that a grant must describe the land to be conveyed, and that the subject granted must be identified by the description given of it in the instrument itself. For the purpose of furnishing such description, the Governor required the ten square leagues of land mentioned in his grant to be measured and located within certain limits. Until this act of identification took place the grant was a mere float, an unlocated order of survey, which did not attach to any particular parcel or tract of land. The act of severance belonged to the former Government, and when such severance is not made to appear, this Commiss. have no power to supply so vital a defect in the claimants' testimony. After a careful examination of the voluminous documents filed in this case, I am clearly of the opinion that the grant was not intended, and was not so understood by either of the parties, as being made by metes and bounds; indeed the claimants themselves, in their conduct with Wolfskill, admit that they did not know the location of their grant, and in every stage of the proceeding show a commendable zeal to secure its location in the manner pointed out by the law. This case falls within the rule established in the Honcut case heretofore decided by this Commission, in regard to the question of identity and location, and although the case may be one of great hardship, and one which addresses itself strongly to the political department of our Government for relief, the law has conferred no such power on this Commission. We are therefore of opinion that the claim in this case should be rejected.

Filed in office Nov. 15th, 1853.

GEO. FISHER, *Sec'y.*

JUAN MANUEL VACA
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the Commission, that the said claim of the petitioners is not valid, and their application for confirmation thereof is therefore denied.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office Nov. 15th, 1853.

GEO. FISHER,
Sec'y.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, Secretary to the Board of Commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing pages, numbered from both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said Board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 57, on the docket of the said Board, wherein Manuel Vaca and Felipe Pena are the claimants against the United States for the place known by the name of "Los Putos."

In testimony whereof I hereunto set my hand, and affix my private seal (not having a seal of office), at San Francisco, California, this twenty-third day of August, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

(Signed) GEO. FISHER,
Sec'y.

(*Notice of Appeal.*)

IN THE DISTRICT COURT OF THE UNITED STATES
for the Northern District of California.

In the matter of MANUEL VACA *et al.*, claiming the Rancho de los Putos.

Notice is hereby given, that it is the intention of the claimants in the above cause to prosecute the appeal from the decision therein of the Board of Commissioners appointed under the Act of Congress of 3d March, 1851, entitled An Act to ascertain the Private Land Claims in California.

By their Attorneys,
JONES AND STRODE,
Survivors of Jones, Thompkins & Strode.

To the Clerk of the U. S. Dis't Court for said Northern District.

(Endorsed) Filed September 21, 1855.

JOHN A. MONROE,
Clerk.

(*Petition for Review.*)

IN THE DISTRICT COURT OF THE UNITED STATES
for the Northern District of California.

The petition of Juan Manuel Vaca and Juan Felipe Peña (otherwise called Armijo), respectfully shows, that in accordance with the

Act of Congress of 3d March, 1851, entitled An Act to ascertain and settle the Private Land Claims in the State of California, "they presented before the Board of Commissioners established under said Act, their claim to a certain tract of land situated in said State, and known by the name of *Las Putos;* that afterward said Board proceeded to examine said claim, and decided the same to be invalid, and rejected it; wherefore the said claimants present this petition, and pray this Court to decide on the validity of their said claim.

The present petitioners are the original and the present claimants to said tract of land, and for an account of the nature of their claim they further respectfully show, that they were Mexican Citizens of the Department of New Mexico, whence they emigrated to the Department of Californias with their families and herds in the year 1842, for the purpose of establishing themselves in this department, according to the laws of the country, and the invitation of the Supreme Government: that accordingly, on their arrival here, they were adjudged worthy, from the numbers composing their respective families, the amount of stock which they wished to pasture, and for their personal services, to receive a concession of ten square leagues, or *sitios de ganado mayor* of land, and the same was granted to them on the 27th January, 1843, by Don Manuel Micheltorena, Governor of California, and invested with the power of making such grant: that they thereupon entered on their said granted land, and occupied it personally, and by cultivation, and the pasturage of their stock: that on the 18th April, 1844, they presented themselves by a petition of said Vaca, pursuant to law, and the directions of their said grant, before the proper magistrate, and asked juridical measurement and delivery to be given them of their said land, which Act, owing to the opposition of William Wolfskill, who set up a claim to a portion of their said granted land, said magistrate, without any fault or laches on the part of said claimants, refused to perform: that thereupon, on the 1st of May of said year, they appealed, by petition of said Vaca, to the superior authority of the department, said Governor Micheltorena, and pending the execution of the order given by him therein, a civil revolution broke out, and said Micheltorena was deposed; in consequence of which, and the disturbed state of the country, the claimants were for a long time thereafter hindered from further proceedings in the premises; that subsequently various proceedings took place in respect of the question between the claimants and said Wolfskill, and on the 27th July, 1845, the then Governor of the Department, Don Pio Pico, made an order to the effect that said Wolfskill should retain the land that he claimed, and a new grant be issued to the present claimants, which was accordingly done on the 30th July, 1845, and on the 1st October following, duly approved by the Government Council, at that time known as the Departmental Assembly.

By subsequent acts before said Governor Pico, and approved by him, the claimants and said Wolfskill entered into an arrangement

respecting their said lands, and the Governor, on the 18th November, 1845, made an order that said Wolfskill should proceed to Sonoma, and by the Judge of that district be placed in possession of the lands that had been conceded to him, and afterwards the like proceedings be had in reference to these claimants.

Before these measures could be accomplished, the war between the United States and Mexico, and the consequent change of government, and interruption of proceedings, took place.

All which appears in the report of said Board of Commissioners, and documentary evidence and testimony of witnesses on which it is founded, a transcript of which is on file in the office of the clerk of this Court, and prayed to be taken, and here referred to as a part of this petition.

The land herein claimed is situated in the State of California, north of the 37° north latitude.

By their Attorneys,

JONES & STRODE,
Survivors of Jones, Thompkins & Strode.

Service of the within petition acknowledged this the 25th of September, 1854.

S. W. INGE.

(Endorsed) Filed September 25, 1854.

JOHN A. MONROE,
Clerk.

(*Order allowing Further Testimony to be taken.*)

At a special term of the District Court of the United States of America for the Northern District of California, held at the Courthouse in the city of San Francisco on Friday, the 29th day of September, A. D. 1854:

Present, Hon. ISAAC S. K. OGIER, District Judge.

MANUEL VACA *et al.*
vs.
THE UNITED STATES.

In this case, on motion of counsel for claimants, and by consent of the District Attorney, it is ordered that either party have leave to take further testimony, on reasonable notice, before the United States Commissioner of this Court.

(Endorsed) Filed September 29th, 1854.

JOHN A. MONROE,
Clerk.

(*Deposition of M. G. Vallejo.*)

U. S. DISTRICT COURT,
Northern Dist. of California.

MANUEL VACA & FELIPE PENA
vs.
THE UNITED STATES.

Testimony taken before John A. Monroe, U. S. Commissioner, October 31st, 1854.

Present, the U. S. Dist. Att'y, by A. Glassell, Esq., and the counsel for claimants.

Mariano G. Vallejo, being duly sworn, deposes and says:—

Question. What is your name, age and residence?

Answer. M. G. Vallejo, aged forty-seven, and reside in Sonoma. I am acquainted with the Rancho Los Putos, wherein the above Manuel Vaca and Felipe Peña are claimants. It is in Solano county. Have known the Rancho since 1838 or 1839; map marked 5 gives a general idea of the land to one acquainted with the land.

Question. Describe the boundaries of the land.

Answer. A rock in the Suisun tract of land, marked a long time ago, and the whole line of the Suisun land northwardly, between the low hills to Wolfskill's Ranch, and meet with the boundaries of said Wolfskill's Ranch; thence east about 8 or 9 miles, and thence south 9 or 10 miles, more or less, to the Suisun line, and thence west along Suisun line to the place of beginning. The natural boundaries from the starting-point of the first course I have described, was along the low hills this side of a large mountain between Suisun and Sacramento. The contents of the Ranch is ten leagues. The claimants lived there in 1838 and 1839, before they obtained the title; they had large improvements, large house and barn, and improved enclosed fields, and have occupied it to the present time.

M. G. VALLEJO.

(*Cross-Examination.*)

Question. What are your means of ascertaining the metes and boundaries above stated, to be the boundaries of said Rancho?

Answer. I have been on the land about twenty years, and knew the ten league tract. I lived there a long time, and know the land better than those who have made the map. I know every creek and stone on it. I first granted the land to Vaca, first as director of colonization in that part of the country, without any reference to the government, and I pointed him out the spot myself, and always advised the elder Vaca to fix those boundaries. I have no interest in the land.

M. G. VALLEJO.

Direct Resumed.

The natural boundaries are such as could be readily ascertained, and are defined on the map.

M. G. VALLEJO.

Deposition of Salvador Vallejo.

Salvador Vallejo, being duly sworn, deposes and says: I am forty-two years old, and reside in Napa county. I am acquainted with the tract of land claimed by Vaca and Peña. The claimants have resided there from 1838 or 1839 to the present day. They built houses on there at the time of their first residence thereon. The line of the Suisun Rancho lies on the southerly side. The cordiera or chain of mountains known as the Napa Mountains, lie on the westerly side, and on the northerly by the lands of William Wolfskill, and on the east the plains of Sacramento. There are about ten leagues in the boundaries I have described. There is a range of hills between the Suisun Ranch and Vaca tract. There are some low hills which have been recognized as boundaries between the two Ranchos of Vaca and Wolfskills. The sons of Vaca and Peña are not on the Rancho. Do not know where Demetrio Peña is located. I have heard lately that Felipe Peña was formerly called Felipe Armijo.

SALVADOR VALLEJO.

(*Deposition of C. L. Richards.*)

C. L. Richards being duly sworn, deposes and says: I am twenty-one years of age, and reside in San Francisco. I am a surveyor and civil engineer by profession. I have surveyed the Rancho de los Putos. When I went to survey the Rancho, the instructions were given to me by the Surveyor-General, and I supposed they were taken from the Spanish papers. The survey was made for the claimants in this case. We had a map from the Espediente, and also descriptions explaining the map. Map marked No. 5 is the map we had. I made the survey under instructions, and the map, both of which or copies of which are in the transcript in this case. I commenced on the southern boundary of Wolfskill's Ranch, one mile and one-half, in an easterly direction, from the southwestern corner of Wolfskill's Ranch, thence along the southern boundary of Wolfskill's Ranch, and struck the Putos river; then continued down the river to a point about one mile east of Marcus Vaca house; then returned to the point I commenced down the Napa Mountains to a small range of hills that divide Suisun Valley from what is called Laguna Valley, about two and one-half miles from Felipe Peña house, and from thence in an easterly direction for five miles and one-quarter into the Sacramento Valley. The western boundary is

as definitely defined as any Ranch, by the foot of the Napa Mountains; on the north by Wolfskill's line, a surveyed line; on the south there is no definite boundary, but a low range of hills, and I run along the top of those hills till I struck the Sacramento Valley. A surveyor could made a survey easily from the description in the grant. If Wolfskill's line is the true line, there are three sides defined in Ranch claimed in this case; Peña house and Vaca house were on the Ranch.

Cross-Examined.

Question. About what number of leagues of land is contained in the description in the map?

Answer. I would judge it would contain twice as much as ten leagues. The map, I believe, is drawn from the description in the grant. I know it contains twice as much as ten leagues. I run the fourth line from instructions received from the Surveyor-General's Office. I was paid by the claimants for making the survey.

C. L. RICHARDS.

The foregoing depositions were taken in pursuance of an order of Court entered on the 29th day of September, A. D. 1854.

Sworn to and subscribed before me this 31st day of October, A. D. 1854.

JOHN A. MONROE,
U. S. Commissioner.

(Endorsed) Filed October 31st, 1854.

JOHN A. MONROE,
Clerk.

(*Deposition of John Wolfskill.*)

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, *December 28th*, 1854.

On this day, before William H. Chevers, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c. &c., came John Wolfskill, a witness produced on behalf of the claimants in case No. 74, being an appeal from the Board of Commissioners to ascertain and settle the private land claims in the State of California, in case No. 57 on the docket of the said Board of Commissioners, and was duly sworn, and testified as follows:

(Present, Edwin A. Lawrence and John Carrey, claimants' attorneys, and the U. S. Dist. Att'y, by Andrew Glassell, Esq'r.)

Question 1st, by Claimants. What is your name, age, and place of residence?

Answer. John Wolfskill; fifty years of age; and I reside in Solano County, on what is known as Wolfskill's Rancho.

Question 2d. Are you acquainted with Manuel Vaca and Felipe Peña, claimants in this case? If yea, state how long you have known them.

Answer. I am acquainted with the said Vaca and Peña. I have known them both since the year 1842.

Question 3d. Are you acquainted with the Rancho "Los Putos," claimed in this case? If yea, how long have you known it?

Answer. I did not know it by that name, but know the Rancho in question. I knew it as Vaca and Peña's Rancho. I have known it since 1842.

Question 4th. Are you acquainted with the boundaries of said Rancho? If yea, state them.

Answer. I am acquainted with the boundaries of said Rancho. They are as follows: On the north by the Wolfskill Rancho, on the west by the Napa Mountain range, on the south by the range of hills which divides the Suisun Valley from the Vaca Valley, and on the East by an open plain.

Question 5th. Are you particularly acquainted with the Wolfskill Rancho in question? If yea, how many leagues does it contain?

Answer. I am particularly acquainted with said Wolfskill's Rancho. It contains four leagues.

Question 6th. What proportion of the Wolfskill Rancho lies between the river "Los Putos" and the Rancho in question?

Answer. A little more than half.

Question 7th. State if there is a range of hills extending from the Napa range of mountains eastward, between Wolfskill's Rancho and the one in question.

Answer. There is a range of hills extending eastward about three miles.

Question 8th. Do you know where the Tolanes Rancho, claimed by Armijo, lies, and in what direction from the one in question?

Answer. I know where the Armijo Rancho is. It lies in a westerly direction from the one in question, and adjoining it.

Question 9th. Do you know that the claimant in this cause occupied the Rancho in question? If yea, when did they first occupy it, and in what manner?

Answer. They did. They first occupied it in 1842. They built a house on it in the same year, and lived in it, and had a large number of cattle on it, also a large number of horses. The year following, they cultivated the land, by raising corn, peas, beans, &c.

Question 10th. Have they continued the occupation of said Rancho up to the present time, and do they live there now?

Answer. They have continued the occupation up to this time, and reside on it still.

Question 11th. State about what number of horses and cattle they kept on said Rancho.

Answer. I think it was in the year 1846 they had there about 2000 head of cattle, and from 200 to 300 head of horses. During the whole of their occupation they have kept on the place a large number of horses and cattle.

Question 12th. State whether Vaca and Peña each had a family; and if yea, how large they were.

Answer. They each had a family; Peña had a wife and six children; Vaca had seven children; the children lived on the Rancho; one of Vaca's sons married shortly after they went upon the Rancho, and another two or three years after; they continued to live on the Rancho with their wives.

Question 13th. Did you ever know the Rancho in question by any other name than the Vaca and Peña Rancho? If yea, state by what name.

Answer. I have known it by the name of "Ulattis," (witness is here shown the map attached to the transcript in this case,) and says that the boundary line as described on the map and called "La Arroya de los Legucitas" I understand to be what is now called "Rio de los Putos;" "Legucitas" was the name of an Indian village, situate on the southerly side of "Los Putos" creek, about four miles from the base of the Napa mountains.

Question 14th. Was the country immediately about the Indian village known by the name of "Legueitas?"

Answer. It was.

Cross-Examined by the U. S. District Attorney.

Question 1st. State all the means which you had for ascertaining the limits of the said Rancho in question, and how and when you ascertained those which you have described to be the correct limits.

Answer. The only means which I had for ascertaining the limits of said Rancho were, from what Vaca and Peña told me were their boundaries, except as to the boundary by the Wolfskill Rancho, which I know independent, and except that they occupied within those limits. My information from those parties was obtained in 1843, and since.

Question 2d. Are you the claimant of the Wolfskill Rancho which you refer to as one of the said limits of the Rancho in question?

Answer. I am not; neither have I any interest in it.

Direct Examination Resumed.

Question 15th. Were the boundaries of said Rancho you have mentioned well known objects, and were they respected by the adjoining proprietors?

Answer. They were. So far as I know they were respected by the adjoining neighbors.

Cross-Examination Resumed.

Question 3d. Did you ever know of any neighbor doing any act recognizing the said boundaries? and if so, what act, and when.

Answer. All I know is, the way the neighbors recognized the right of these claimants to the land in question was, that from year to year said claimants made a *rodeo*, or a collecting of all the cattle on the land in question, whereupon said claimants would notify their neighbors to attend, and each one gather his own cattle. These are the only acts of recognition that I speak of.

his
JOHN + WOLFSKILL.
mark.

Sworn to and subscribed before me this 28th day of December, A. D. 1854.

WILLIAM H. CHEVERS,
U. S. Commissioner.

Endorsed) Filed December 28th, 1854.

JOHN A. MONROE,
Clerk.

(*Deposition of Demetrio Peña.*)

UNITED STATES OF AMERICA,
Northern District of California:

JUAN MANUEL VACA & JUAN FELIPE PENA ads. THE UNITED STATES.

Testimony taken before John A. Monroe, U. S. Commissioner N. D. of California, April 10th, 1855.

Demetrio Peña being duly sworn, deposes and says: I am twenty-six years of age, and reside in Solano county. I know Juan Felipe Peña; he is my father. My father came to this country from New Mexico, in 1840. My father's mother married a second time, a man by the name of Armijo, and my father being then young, was called Armijo. When my father arrived here, he went by the name of Juan Felipe Peña. My father and Juan Manuel Vaca were acquainted in New Mexico; Vaca used to call my father by the name he received from his step-father (Juan Felipe Armijo). The mother of my mother was a cousin of Don Manuel Vaca. I was with Don Manuel Vaca when he applied for the grant of the tract of land in question. My father was not present. Baca told him it was unnecessary, he might remain on the land, and he, Baca, would apply for it. Baca was a next friend or partner of my father's (a compadre); Juan Felipe Peña and Juan Felipe Armijo were the same person. I know no other person called Don Felipe Armijo.

Cross-Examined by the U. S. Attorney.

I have no security from my father for any portion of the land. I reside on the land, and my father may give me some portion if the same is eventually confirmed. My father gave me permission to settle of the land; I am the legitimate son of my father.

The Dist't Att'y, by Glassell, objects to the testimony, on the ground of interest of the witness.

his
DEMETRIO + PENA.
mark.

Witness, JOHN A. MONROE,
U. S. Commissioner.

(Endorsed) Filed April 10th, 1855.

JOHN A. MONROE,
Clerk.

(*Answer of the United States.*)

In the District Court of the United States for the Northern District of California.

THE UNITED STATES, Appellants,
vs.
MANUEL VACA *et al.*

Claiming "Los Putos."

The United States by their Attorney deny the validity of the title set out in the petition of the said Appellants, and pray that the decision of the Board of Commissioners be affirmed, and that the said title be decreed to be invalid.

A. GLASSELL,
Ass't U. S. Att'y.

(Endorsed) Filed June 20th, 1855.

JOHN A. MONROE,
Clerk,

By W. H. CHEVERS,
Deputy.

(*Opinion of the Court confirming Claim, delivered by Judge McAllister.*)

District Court of the United States for the Northern District of California sitting for the adjudication of Land Titles.

JUAN MANUEL VACA and JUAN FELIPE PENA
versus
THE UNITED STATES.

This claim was rejected by the Board of Commissioners "to ascer-

tain and settle the private land claims in the State of California," and is now before the Court on appeal.

On the 6th June, 1842, Vaca, one of the appellants, petitioned the Commandant General for the place "Legueitos," bounded on the south by the "Suisun," on the north by "Los Putos," on the east by the estuaries that form the interior bay of the Straits of Karguines, consisting of ten sitios de ganado mayor. On the same day a provisional grant was made of the lands, subject to the measurement of the adjoining ranchos, and directing the petitioner to apply for the usual title from the political Departmental Government. On the 13th January, 1843, a petition was made to Micheltorena for the same land, referring to the provisional grant, and after a favorable report from the functionary to whom it had been referred, a grant was made by Governor Micheltorena under date 27th January, 1843, to Vaca and Don Juan Felipe Armijo, for the place known as "Leguaytos," bounded east by the Sacramento river, west by the Sierra of Napa, north by the creek (or arroya) de Lehuaytos, south by the river Suisun, without injury to the measurements which are to be made of the contiguous ranchos, subject to the approval of the Departmental Board. The usual conditions were annexed to the grant. Among them was the following: "The tract of land of "which donation is made is of ten sitios de ganado mayor, as shown "in the sketch annexed to the respective expediente. The Judge "giving the possession shall cause it to be measured according to "ordinance, the surplus to remain for the convenient use of the Na- "tion." On the 18th April, 1844, Vaca, under the name of Baca, applied for judicial possession, which was refused by the Mexican local authorities, on the ground that he had not obtained the approval of the Departmental Assembly, and that he was bound to respect the possession of his neighbors, which as yet had not been ascertained. There then ensued between the appellants and one William Wolfskill, who had received a previous concession of lands, a controversy about their respective boundaries. The result of that controversy, which had been litigated before the Mexican authorities, was a petition by the appellants, dated August 30, 1845, to Governor Pico, stating that an amicable adjustment of said controversy had been made, and concluding in these words: "That in "order to throw off all doubt, and to give cause to any pretensions "being made in the future, &c., your Excellency will be pleased to "concede the tract Los Putos," which is adjoining at the east the place of William Wolfskill. This petition was for ten sitios de ganado mayor, and is stated to be in entire conformity with the donation previously made in 1843. On this petition a marginal concession of the Governor is made, in which he treats the land petitioned for as the same previously granted by Micheltorena in 1843, and directs title to be made to Vaca and Armijo. Accordingly on 30th July, 1845, (30th August, 1845,) a grant was issued to appellants for the place "Los Putos," on the margin of the river, adjoining at the

east the rancho of William Wolfskill. This grant is for ten square leagues, and recites that the tract is in entire conformity as heretofore it had been conceded to them. This grant is made by Gov. Pio Pico, and is subject to the measurement to be made of the contiguous ranchos previously conceded, and also subject to the approval of the Departmental Assembly; and it is required by one of its conditions, that the Judge giving possession shall cause it to be measured to the ordinance, reserving the surplus for the proper use of the Nation. On the 1st October, 1845, the Departmental Assembly approved of this grant, but annexed to such approval a condition that within the term of four months after its date, the grantees shall place in the hands of his Excellency, the Governor, a proper sketch, with the understanding if they should not do so, they should forfeit their right to the tract, and it should be liable to be denounced by another. The foregoing documents ascertain that the land was described in the grant of Micheltorena by the name of "Lehuaytos," and in the late grant of Pio Pico by the name of "Los Putos," and that both grants are made to Juan Manual Vaca, and Juan Felipe Armijo. By the testimony taken since the case has been brought into this Court by appeal, it is proved that the boundary line named in the sketch referred to in the grant from Micheltorena as "El arroyo de las Leguaytos," is the same as that subsequently known as the "Rio de los Putos." This will account for the difference of names in the two grants. The marginal concession on the petition made by Pio Pico August 30, 1845, and the condition annexed to the grant made by him on the same day, treat the lands alluded to in both grants as identical. From the other evidence in this cause, there is little doubt that the lands petitioned for are within the boundaries called for by the grant made in 1843 by Micheltorena. The rancho of Wolfskill constitutes one of the boundaries of the land in the occupancy of the appellants. The contest which had been waged between appellants and Wolfskill was for lands, or a portion of them within those boundaries which Wolfskill claimed under a previous concession. As to the discrepancy between the names Armijo and Peña, the co-appellant of Vaca, that is explained by the deposition of Demetrio Peña, which establishes the identity of Armijo with Peña. Judicial possession never was obtained by appellants; the reason of which is explained by the witness, William Wolfskill, who refers to the controversy which had existed between himself and the appellants, and which he states was settled "by a compromise made with the knowledge and authorization of Gov. Pico in the fall of 1845." By that order of the Governor and compromise, his lands were directed to be first measured, and afterwards those of the appellants. The witness states, "he "was not able to procure the judicial measurement and possession "during the existence of the Mexican Government in this country, "and consequently my tract was never measured until the summer "of 1852, when it was surveyed by the Surveyor-General of the

"United States. The exact location of the measurement of the lands "of Vaca and Peña were, by the order of the Governor and the com- "promise, subject to the prior measurement of mine." The parol evidence establishes the fact that appellants have been in possession of the land petitioned for as early as 1842, living on it with their families, and cultivating it. One witness establishes the occupation and cultivation from a period some years anterior to the grant of Micheltorena, and states the appellants had houses and enclosed fields. The occupation of the premises has continued to the present time. The failure to obtain judicial possession cannot be considered to operate as to render invalid the claim of the appellants, under the peculiar circumstances of this case. It was a condition subsequent, and its breach was never availed of by the Mexican Government, nor any one of her citizens, by process of denouncement, and the appellants, with large families, continued in the cultivation of the soil, thus fulfilling the object the Government had in view in the issue of the grant.

It has been argued that appellants have failed to comply with the condition annexed to the approval of the Assembly, viz: that within four months after its date, they should place in the hands of the Governor a map or sketch of the premises. The penalty annexed to the breach of this condition was simply to subject the land to being denounced, which it never was. Apart from this, there is evidence to lead us to suppose that the sketch or map, now in the archives and annexed to the transcript, was there at the time this condition was annexed to the approval of the Assembly. And at this conclusion the Commissioners arrive at in their opinion. "It will be re- "remembered (they say) that the proof shows that two grants were "made, one by Micheltorena, in 1843, the other by Pio Pico, in "1845, and that it was Pico's grant which the Assembly approved. "By reference to the paper containing the communication of Vaca, "addressed to Governor Micheltorena, bearing date the 1st October, "1844, it will be found that reference is therein made to a plan of "the tract in question. The plan referred to, is no doubt the map "referred to in the archives. It was sent to Micheltorena after he "had made the grant, and doubtless was there at the time Pico made "his grant, but was not made part of the expediente sent to the "Departmental Assembly."

The conclusion at which the Commissioners arrive is fortified by the fact, that in the third condition annexed to the grant issued by Micheltorena, distinct reference is made to a map as in existence at the time, and annexed to the expediente. In view, then, either of the law or the evidence in this cause, we cannot deem the objection urged on the ground under consideration available.

This cause was submitted without argument, the parties stating respectively their willingness to rely on the case presented by the Board of Commissioners, in their opinion annexed to the transcript. The Board acknowledge the equity of the claim, and in the concluding clause of their opinion say, "Although the case may be one

of great hardship, and one which addresses itself strongly to the political department of our Government for relief, the law has conferred no such power on this commission." They reject the claim on the alone ground that the land granted had not been severed from the public domain by the authority of the Government of Mexico, by appellants being placed in judicial possession, and that the terms of the grant were so indefinite as to render it impracticable to segregate the quantity granted from the lands included within the boundaries called for by the grant. In view of the testimony taken in this Court in connection with that before the Commissioners, we are by no means satisfied that the latter ground taken by the Commissioners is tenable. It would be passing strange if that should be a floating grant which covered a tract of land, the local boundaries of which, as respects an adjoining proprietor, had been the subject of litigation for two years, before the Mexican authorities, as appears from the evidence in this cause, unless, it is to be considered that the obtainment of judicial possession by a claimant is necessary to title, and no other means of actual segregation of land is to be admitted as evidence of that fact. But we pass to the consideration of the ground taken by the Board, and their reasons for rejecting this claim.

The grant under which appellants claim is, in common parlance, termed a "sobrante." It concedes a certain quantity of land, situated within a larger quantity, the certainty of which latter is ascertained by fixed limits, within which are lands which had been previously conceded. There are many such grants, and they arose out of the peculiar condition of things in California. Neither the grantor nor the grantee had the means of defining quantity by measurement. No surveys made during the Mexican rule have come to the notice of this Court, and we believe that the condition of things as it existed is truly stated in the instructions by the Department of the Interior, U. S., to the Board of Commissioners: "That there are, it is believed, no Spanish or Mexican plats of survey, extent of lands in California; no actual surveys, so far as this office is informed, having ever been executed during the sovereignty over the countries of either Spain or Mexico." (*Instructions of* 11*th Sept.*, 1851.) Under this state of affairs the idea of quantity was not only conjectural, but almost abandoned in the granting system in California. The grantee presented a rude document, dignified with the name of map, or sketch, on which were portrayed certain boundaries, without regard to relative distances, and in some instances, without true indication as to their bearings, the prominence of which objects seemed to be the inducement for calling for them. Within these exterior boundaries was the land needed; and the petitioner for it, in his application, described it as so much land bounded by those exterior limits, and by such description it was granted. The grantor, equally ignorant as careless of quantity, protected the public interest by reserving any surplus that might be

ascertained on subsequent measurement for government uses. Another applicant would solicit a certain quantity of land to be taken out of the same, or partially the same, exterior limits called for by the previous grant, and a second concession would be made to him, subjecting his concession to the measurement to be made under the elder grant, and reserving any surplus that might remain to the nation. Such is the character of the grant under which appellants claim.

These reservations for public uses are pretty generally introduced into the California grants, and the effect of such system of granting has been to render it impracticable, under the rules of common law applicable to the interpretation of grants, to extend to claimants under Mexican concessions the protection afforded to them by the stipulations of the treaty of Guadalupe Hidalgo. Congress foresaw this, and in passing the Act of March 3d, 1851, with a view to fulfil those stipulations, have given us very different rules of interpretation, and among them the principles of equity, and the law, usages, and customs of the Mexican Government. It is true, among these rules, Congress has enumerated the decisions of the Supreme Court of the United States, but have added, with careful forethought, the restriction, "so far as they are applicable."

Now, it is upon the applicability of certain decisions of the Supreme Court that the Commissioners rely in rejecting this claim. Those decisions were predicated upon the Act of Congress, passed 26 May, 1824, and the laws and ordinances of Spain and France. The Chief Justice, in delivering the opinion of the Supreme Court in the case of Fremont *vs.* United States, has demonstrated the difference which exists between that law and the Act of March 3d, 1851, under which we act, and the great diversity which exists between "the mode and manner of granting lands," which prevailed in Louisiana and Florida on the one hand, and California on the other, and therefore concludes that the decisions made upon the one law, and one "mode and manner of granting," are inapplicable to guide the Court when called on to adjudicate in regard to the others.

The Board of Commissioners, in their opinion, say, "the counsel for claimants (relying on the boundaries described in the grant of Micheltorena, and the sketch annexed to it) state, these boundaries are all natural, plain, and distinct, and that there is not the least difficulty in ascertaining the lands granted. If they had assumed the position that there was not the least difficulty in ascertaining the boundaries within which the lands granted were to be located, there would have been no difference of opinion between us."

Here, then, is a case of a grant of a certain quantity of land to be afterwards surveyed and laid off within a certain territory.

Such a grant under the system which prevailed in California, conveys, under the authority of Fremont *vs.* United States, a vested and immediate interest that this Court is bound to protect. All the